Queensland

Mineral Resources Act 1989

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Mineral Resources Act 1989

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Mineral Resources Act 1989

An Act to provide for the assessment, development and utilisation of mineral resources to the maximum extent practicable consistent with sound economic and land use management

Chapter 1 Preliminary

Part 1 Introduction

1 Short title

This Act may be cited as the *Mineral Resources Act 1989*.

2 Objectives of Act

The principal objectives of this Act are to—

(a) encourage and facilitate prospecting and exploring for and mining of minerals;

(b) enhance knowledge of the mineral resources of the State;

(c) minimise land use conflict with respect to prospecting, exploring and mining;

(d) encourage environmental responsibility in prospecting, exploring and mining;

(e) ensure an appropriate financial return to the State from mining;

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(f) provide an administrative framework to expedite and regulate prospecting and exploring for and mining of minerals;

(g) encourage responsible land care management in prospecting, exploring and mining.

Part 2 Application of Act generally etc.

3 Application of Act to Commonwealth land and coastal waters of the State

(1) To the extent that the Parliament of the Commonwealth shall have from time to time vested in the Crown in right of Queensland jurisdiction to make such laws with respect thereto, this Act applies in respect of the sea bed and subsoil beneath the internal waters of Australia and beneath the baseline waters of the State and to waters above that sea bed as if that sea bed and subsoil were land within Queensland.

(2) This Act applies in respect of land of or vested in the Commonwealth to the extent that from time to time the Parliament of the Commonwealth shall determine.

(3) Subsections (1) and (2) shall not be construed to authorise prospecting, exploration or mining of the sea bed and subsoil that—

(a) is within a protected area; or

(b) by a law of the Commonwealth is excluded from the application of this Act (whether by reference to this Act or to the subject matter of this Act) to the extent of that exclusion.

(4) In this section—

baseline waters means the waters between the mean low water springs level and the inside of the baseline under the *Offshore Minerals Act 1998*, section 16.

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3A Relationship with petroleum legislation

(1) This section does not apply to a coal or oil shale mining tenement.

Note—

1 For the relationship between this Act and the Petroleum and Gas (Production and Safety) Act—

(a) in relation to coal or oil shale mining tenements, see chapter 8; or

(b) otherwise, see the Petroleum and Gas (Production and Safety) Act, section 6 (Relationship with Mineral Resources Act).

2 See also section 386W for the relationship between carrying out activities under section 386V and authorised activities for petroleum authorities or 1923 Act petroleum tenures.

(2) Subject to subsections (3) to (9), the *Petroleum Act 1923* and the Petroleum and Gas (Production and Safety) Act do not limit or otherwise affect—

(a) the power under this Act to grant or renew a mining tenement over land (the ***overlapping land***) in the area of a petroleum authority; or

(b) a mining tenement already granted over land (also the ***overlapping land***) in the area of an existing petroleum authority.

(3) If the petroleum authority is a petroleum lease or petroleum facility licence and the mining tenement is an exploration permit, mineral development licence, or mining lease, an authorised activity for the mining tenement may be carried out on the overlapping land only if—

(a) the petroleum lease or petroleum facility licence holder has agreed in writing to the carrying out of the activity; and

(b) a copy of the agreement has been lodged; and

Note—

For other relevant provisions about lodging documents, see section 386O.

(c) the agreement is still in force.

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(4) If the petroleum authority is a petroleum lease and the mining tenement is a prospecting permit or mining claim, an authorised activity for the mining tenement may be carried out on the overlapping land only if carrying out the activity does not adversely affect the carrying out of an authorised activity for the petroleum lease.

(5) Subsection (4) applies whether or not the authorised activity for the petroleum lease has already started.

(6) If the petroleum authority is an authority to prospect or pipeline licence and the mining tenement is not a mining lease, an authorised activity for the mining tenement may be carried out on the overlapping land only if—

(a) the authority to prospect or pipeline licence holder has agreed in writing to the carrying out of the activity, a copy of the agreement has been lodged and the agreement is still in force; or

(b) carrying out the activity does not adversely affect the carrying out of an authorised activity for the authority to prospect that has already started.

(7) If the petroleum authority is an authority to prospect and the mining tenement is a mining lease, an authorised activity for the authority to prospect may be carried out on the overlapping land only if—

(a) the mining lease holder has agreed in writing to the carrying out of the activity; and

(b) a copy of the agreement has been lodged; and

(c) the agreement is still in force.

(8) Subsection (7) does not apply, or ceases to apply, if the same person holds the authority and the mining lease.

(9) This section applies despite any other provision of this Act.

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3B Relationship with Geothermal Energy Act 2010 and Greenhouse Gas Storage Act 2009

The relationship between this Act, the *Geothermal Energy Act 2010* (the ***Geothermal Act***), the *Greenhouse Gas Storage Act 2009* (the ***GHG storage Act***) and authorities under them is provided for under—

(a) chapter 9; and

(b) the Geothermal Act, chapter 5; and

(c) the GHG storage Act, chapter 4.

3BA Relationship with Common Provisions Act

The relationship between this Act and the Common Provisions Act is provided for under the Common Provisions Act, section 6.

3C Declaration for Commonwealth Act

A mining tenement is declared not to be personal property under the *Personal Property Securities Act 2009* (Cwlth).

4 Effect of change of baseline

(1) If—

(a) an offshore area is in the area of an exploration permit, mineral development licence or mining lease (the ***mining tenement***); and

(b) there is a change to the inner limit of the coastal waters of the State as defined in the *Offshore Minerals Act 1998*, section 16(1) and (2); and

(c) as a result of the change, the offshore area comes within those coastal waters;

this Act applies, while the mining tenement or any successor mining tenement remains in force, as if the area were still within the offshore area.

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(2) If—

(a) a mining lease takes effect immediately after an exploration permit expires; and

(b) the holder of the mining lease immediately after it takes effect was the holder of the exploration permit immediately before it expired;

the mining lease is a successor mining tenement to the exploration permit for subsection (1).

(3) If—

(a) a mineral development licence takes effect immediately after an exploration permit expires; and

(b) the holder of the mineral development licence immediately after it takes effect was the holder of the exploration permit immediately before it expired;

the mineral development licence is a successor mining tenement to the exploration permit for subsection (1).

(4) If—

(a) a mining lease takes effect immediately after a mineral development licence expires; and

(b) the mineral development licence took effect immediately after an exploration permit expired; and

(c) the holder of the mining lease immediately after it takes effect was the holder of the mineral development licence immediately before it expired; and

(d) the holder of the mineral development licence immediately after it took effect was the holder of the exploration permit immediately before it expired;

the mining lease is a successor mining tenement to the exploration permit and the mineral development licence for subsection (1).

(5) In this section—

offshore area means an area of the sea bed and subsoil to which the Act applies.

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Part 3 Relationship with Planning Act

4A Effect on development

(1) Subject to subsections (2) and (3), the Planning Act does not apply to development authorised under this Act.

(2) The Planning Act applies to development on a Queensland heritage place under the Heritage Act even if development of the place is authorised under this Act.

(3) The Planning Act applies to building work under the *Building Act 1975* that is authorised under this Act, including under a mining tenement.

(4) However, the building work is taken to be accepted development for the Planning Act to the extent the building work—

(a) would, other than for this subsection, be assessable development under the Planning Act; and

(b) complies with the relevant provisions for the building work.

(5) In this section—

relevant provisions, for building work, see the *Building Act 1975*, section 21(5).

4B Notice to local government and chief executive (planning) of particular mining tenements

(1) This section applies if a mining claim, mineral development licence or mining lease (the ***mining tenement***) is granted or renewed.

(2) The chief executive must give notice of the mining tenement to—

(a) each local government in whose area the area of the tenement is situated; and

(b) the chief executive (planning).

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(3) An entity given a notice under subsection (2) must make a note on each relevant map in the local government's planning scheme held by the entity.

(4) The note must—

(a) identify the area of the mining tenement; and

(b) state that the Planning Act does not apply to development in the area authorised under this Act, other than development on a Queensland heritage place under the Heritage Act; and

(c) state that interested persons may obtain details of the mining tenement from the chief executive of the department in which this Act is administered.

(5) In this section—

chief executive (planning) means the chief executive of the department in which the Planning Act is administered.

Part 4 Interpretation

5 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

6 Meaning of *mineral*

(1) A ***mineral*** is a substance—

(a) normally occurring naturally as part of the earth's crust; or

(b) dissolved or suspended in water on or within the earth's crust; or

(c) that may be extracted from a substance mentioned in paragraph (a) or (b).

(2) Subject to subsection (3), each of the following is a ***mineral***—

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(a) any type of clay;

(b) foundry sand;

(c) coal seam gas;

Notes—

1 For what is coal seam gas and incidental coal seam gas, see section 318AC.

2 See also chapter 8, part 8, division 1.

(d) limestone;

(e) marble;

(f) a product that may be extracted or produced by an underground gasification process for coal or oil shale (***mineral (f)***) and another product that may result from the carrying out of the process (also ***mineral (f)***);

Examples of underground gasification processes—

combustion, consumption, heating, leaching and reaction

Example of another product—

gas desorbed as a result of an underground gasification process

Note—

See chapter 12, part 4A for the moratorium relating to mineral (f).

(g) peat;

(h) salt, including brine;

(i) oil shale;

Note—

For what is oil shale, see section 318AD.

(j) silica, including silica sand;

(k) rock mined in block or slab form for building or monumental purposes.

(3) Despite subsections (1) and (2)—

(a) clay (other than kaolin and bentonite) is only a mineral if it is mined for use for its ceramic properties; and

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Examples of uses of clay for its ceramic properties—

- for brick or tile making
- for pottery making

(b) limestone, silica and silica sand is only a mineral if it is mined for use for its chemical properties; and

(c) mineral (f) is only a mineral if—

(i) the coal or oil shale, from which it is extracted or produced, is held under a mineral development licence and it has been added to the licence under section 208; or

(ii) the coal or oil shale, from which it is extracted or produced, is held under a mining lease and it is specified in the lease; and

Note—

See chapter 12, part 4A for the moratorium relating to mineral (f).

(d) each of the following is not a mineral—

(i) soil, sand, gravel or rock (other than rock mentioned in subsection (2)(k)) if it is to be used, or to be supplied for use, as sand, gravel or rock, whether intact or in broken form;

(ii) living matter;

(iii) steam or water.

6A Meaning of *mine*

(1) ***Mine*** means to carry on an operation with a view to, or for the purpose of—

(a) winning mineral from a place where it occurs; or

(b) extracting mineral from its natural state; or

(c) disposing of mineral in connection with, or waste substances resulting from, the winning or extraction.

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(2) For subsection (1), extracting includes the physical, chemical, electrical, magnetic or other way of separation of a mineral.

(3) Extracting includes, for example, crushing, grinding, concentrating, screening, washing, jigging, tabling, electrowinning, solvent extraction electrowinning (SX–EW), heap leaching, flotation, fluidised bedding, carbon-in-leach (CIL) and carbon-in-pulp (CIP) processing.

(4) However, extracting does not include—

(a) a process in a smelter, refinery or anywhere else by which mineral is changed to another substance; or

(b) testing or assaying small quantities of mineral in teaching institutions or laboratories, other than laboratories situated in the area of a mining lease; or

(c) an activity, prescribed under a regulation, that is not directly associated with winning mineral from a place where it occurs.

(5) For subsection (1), disposing includes, for example, the disposal of tailings and waste rock.

(6) A regulation under subsection (4)(c) may prescribe an activity by reference to the quantities of minerals extracted or to any other specified circumstances.

6B Meaning of *prospect*

(1) ***Prospect*** means take action to find out about the existence, quality or quantity of minerals on, in or under land by—

(a) using a metal detector or a similar handheld instrument; or

(b) sampling using only handheld implements, including, for example, hammers, hand augers, panning dishes, picks, shakers, shovels and sieves.

(2) However, ***prospect*** does not include taking action that is—

(a) hand mining; or

(b) the removal of minerals for their sale.

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6C What is carrying out *improvement restoration*

(1) To carry out ***improvement restoration***, for a mining tenement, means to repair any damage caused by an activity under the tenement to all pre-existing improvements on, or attached to, the area of the tenement by—

(a) restoring them to the same, or substantially the same, condition they were in before the damage happened; or

(b) replacing them with another improvement in the condition mentioned in paragraph (a).

(2) For subsection (1), damage does not include damage to which a requirement to rehabilitate or remediate under the Environmental Protection Act applies.

6D Types of authority under Act

The types of authority under this Act are—

(a) a prospecting permit; and

(b) a mining claim; and

(c) an exploration permit; and

(d) a mineral development licence; and

(e) a mining lease.

7 When educational institution is an eligible person

The Minister may treat an educational institution as an eligible person under this Act to enable it to apply for and hold a prospecting permit, mining claim or mining lease only if the Minister is satisfied the activities it intends to carry out under the permit, claim or lease are educational or training activities.

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Part 5 General provisions for minerals and mining tenements

8 Crown's property in minerals

(1) Gold on or below the surface of land is the property of the Crown.

(2) Coal—

(a) on or below the surface of land that was acquired by the Crown as provided in the *Agricultural Lands Special Purchase Act 1901* and subsequently alienated in fee simple by the Crown is the property of the Crown;

(b) on or below the surface of land (other than land referred to in paragraph (a)) is the property of the Crown except where that land was alienated in fee simple by the Crown before 1 March 1910 and the grant of that land did not contain a reservation to the Crown of the property in that coal.

(3) All minerals (other than coal and gold but including minerals dissolved or suspended in water within or upon the earth's crust) on or below the surface of land in Queensland other than land alienated in fee simple by the Crown pursuant to—

(a) the *Alienation of Crown Lands Act 1860*, section 22; or

(b) the *Crown Lands Alienation Act 1868*, section 32; or

(c) the *Mineral Lands Act 1872*, section 21;

are the property of the Crown.

(4) Each deed of grant or lease of unallocated State land must contain a reservation of—

(a) minerals on and below the surface of the land; and

(b) the right of access for prospecting, exploring or mining.

(5) Mineral on or below the surface of land that is or becomes road is (to the extent that the mineral, but for this subsection

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would not be the property of the Crown) on and from the date the land becomes or became road, the property of the Crown.

(6) Where land to a specified depth only is or becomes road, subsection (5) applies in respect only of mineral in or below the surface of that land to the specified depth.

(7) Nothing in subsections (5) and (6) shall be construed as abrogating any right that the owner of land whose land is compulsorily acquired after the commencement of this Act for the purpose of being used as a road may have under any other Act or law to compensation in respect of that acquisition.

9 Exclusive right of Crown to grant mining leases etc. irrespective of ownership of mineral

(1) A person is not competent to grant a lease or to enter into an agreement or arrangement, whether for valuable consideration or otherwise (other than an agreement referred to in section 320(2)(a) or (b)) authorising the prospecting or exploring for mineral or the mining of any mineral therefrom notwithstanding that the mineral is not the property of the Crown.

(2) For the purposes of subsection (1) a compensation agreement entered into pursuant to this Act does not authorise prospecting, exploring or mining.

(3) Subject to this Act, a mining tenement may be granted over land even though—

(a) a deed of grant in fee simple from the State may or may not contain a reservation to the State of the relevant mineral on or below the surface of the land; or

(b) the relevant mineral is not the property of the State.

(4) Notwithstanding the other provisions of this Act, a person who undertakes any airborne activity to determine the existence of minerals shall notify the Minister after the completion of that activity and shall furnish the Minister such data as the Minister may determine in the particular case.

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10 Act does not create estates in land

The grant of a mining tenement under this Act does not create an estate or interest in land.

10AAA Extinguishing mining tenement interests on the taking of land in a mining tenement's area (other than by an easement)

(1) This section applies to the taking of land, other than by taking or otherwise creating an easement, under a resumption law.

(2) Despite any other Act, the taking of land does not extinguish mining tenement interests other than to the extent, if any, provided for in the resumption notice for the taking of the land.

(3) The resumption notice for the taking of land may provide for the extinguishment of a mining tenement interest on the taking only to the extent the relevant Minister for the taking is satisfied the interest is incompatible with the purpose for which the land is taken.

(4) Without limiting the application of subsection (3), the relevant Minister may be satisfied a mining tenement interest is incompatible with the purpose for which the land is taken if, for that purpose, it is necessary to extinguish all interests in the land, including native title rights and interests.

(5) A mining tenement interest may be—

(a) wholly extinguished; or

(b) partially extinguished by—

(i) excluding land from the land the subject of the interest; or

(ii) prohibiting the carrying out of activities by the holder of the interest.

(6) The resumption notice for the taking of land may provide for the extinguishment of mining tenement interests by reference to either or both of the following—

(a) stated land, which—

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(i) may be all or part of the land that is taken; and

(ii) if the stated land is only part of the land that is taken—may be described in the resumption notice in any way, including, for example—

(A) as a shape that does not constitute a block or sub-block; or

(B) by using 3 dimensionally located points to identify the position, shape and dimensions of each boundary;

(b) stated mining tenement interests, which may be all mining tenement interests or mining tenement interests of a particular type.

(7) For the taking of land for which mining tenement interests are extinguished as provided by this section—

(a) each person's interest in an extinguished mining tenement interest is converted into a right to claim compensation under the resumption law; and

(b) the resumption law applies with necessary and convenient changes and with the changes mentioned in subsections (8) and (9) and section 10AAD.

(8) The notice of intention to resume for the proposed taking of the land must state the extent to which the mining tenement interests are proposed to be extinguished.

(9) The entity taking the land must give the chief executive a written notice that—

(a) states the details of the extinguishment; and

(b) asks for the extinguishment to be recorded in the register; and

(c) is accompanied by a certified copy of the resumption notice.

(10) In this section—

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certified copy, of the resumption notice, means a copy of the original of the notice that has been certified by a justice of the peace as being a correct copy of the original notice.

relevant Minister, for the taking of land under a resumption law, means—

(a) if the land is taken under the process stated in the ALA (whether the land is taken under the ALA or another resumption law)—the Minister to whom the application that the land be taken is made under section 9 of that Act; or

(b) otherwise—the Minister administering the resumption law under which the land is, or is to be, taken.

10AAB Effect of extinguishment of mining tenement interests on the taking of land in a mining tenement's area (other than by an easement)

(1) This section applies if, under section 10AAA, the resumption notice for the taking of land (other than by taking or otherwise creating an easement) under a resumption law provides for the extinguishment of mining tenement interests for stated land.

(2) If the resumption notice states that all mining tenement interests relating to the stated land are extinguished and a mining tenement interest relates only to the stated land, the interest is wholly extinguished.

(3) If the resumption notice states that all mining tenement interests relating to the stated land are extinguished and a mining tenement interest relates to the stated land and other land—

(a) the stated land is no longer the subject of the interest; and

(b) without limiting paragraph (a)—

(i) the stated land is excluded from the area of the mining tenement comprising the interest, or under or in relation to which the interest exists; and

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(ii) this Act applies in relation to the area of the mining tenement with necessary and convenient changes to allow for the exclusion of the stated land, including, for example, to allow the area—

(A) to include a part of a block or sub-block if the part is what is left after the stated land is excluded from the area; or

(B) to comprise land that is not contiguous; and

(iii) for this Act, land in the area of the mining tenement is taken to be contiguous if the land would be contiguous but for the exclusion of the stated land.

(4) If the resumption notice states that the carrying out of stated activities on the stated land by holders of stated mining tenement interests is prohibited, the holder of a stated mining tenement interest is not, or is no longer, authorised to carry out the stated activities on the stated land.

(5) However, subsections (3) and (4) do not apply in relation to a mining tenement interest that comprises, or exists under or in relation to, a new or renewed mining tenement granted after the land is taken.

10AAC Applications relating to land taken under a resumption law for which mining tenement interests were extinguished

(1) The decision-maker for an application for a new mining tenement may, under a grant provision, grant a new mining tenement for an area that includes acquired land only if the decision-maker, after consulting the entity that took the land, is satisfied the grant of the tenement is compatible with the purpose for which the land is being or is to be used.

(2) If there are 2 or more applications under this Act for the grant, under a grant provision, of a new mining tenement for an area that includes the same acquired land, the applications are to be dealt with as follows—

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(a) the applications must be considered and decided according to the day on which they are lodged;

(b) if the applications were lodged on the same day—

(i) they take the priority the decision-maker decides, after considering the relative merits of each application; and

(ii) the chief executive must give each applicant a written notice stating there is competition for priority between the applicant's application and another application, or other applications, lodged on the same day as the day on which the applicant's application was lodged.

(3) If a grant provision provides for the grant of a new mining tenement (the ***new tenement***) over land in the area of an existing mining tenement (the ***existing tenement***)—

(a) the application under this Act for the new tenement may include acquired land that was, immediately before the taking of the land, in the existing tenement's area; and

(b) subject to subsections (1) and (2), the decision-maker for the application may grant a new tenement for an area that includes the acquired land as if the acquired land were in the existing tenement's area.

(4) To remove any doubt, it is declared that this section does not affect the operation of the provisions of this Act about the application for, and grant of, a new mining tenement other than to the extent provided for in subsections (1) to (3).

(5) In this section—

decision-maker, for an application for a new mining tenement, means the entity responsible for granting the tenement.

grant provision means a provision of this Act providing for the grant of a new mining tenement.

new mining tenement includes a renewed mining tenement.

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10AAD Compensation for effect of taking of land in a mining tenement's area on mining tenement interests

(1) This section applies if land in a mining tenement's area is taken under a resumption law (including by taking or otherwise creating an easement).

(2) In assessing any compensation to be paid to the holder of a mining tenement interest in relation to the taking of the land, allowance can not be made for the value of minerals known or supposed to be on or below the surface of, or mined from, the land.

10AA Joint holders of mining tenement

(1) A mining tenement may be held by 2 or more persons as joint tenants or as tenants in common.

(2) If—

(a) any of the following applications are made for more than 1 proposed holder or transferee—

(i) an application for a mining tenement;

(ii) an application transfer;

(iii) an application to register a transfer of a mining tenement under the Common Provisions Act; and

(b) the application does not show whether the proposed holders or transferees are to hold as joint tenants or as tenants in common; and

(c) the mining tenement or approval is granted;

the chief executive must record in the register that the holders or transferees hold the mining tenement as tenants in common.

(3) In this section—

mining tenement includes an interest in a mining tenement.

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10A Extension of certain entitlements to registered native title bodies corporate and registered native title claimants

(1) To the extent that a provision of chapter 2, other than section 19(1) or 34, applies to a prospecting permit granted only for pegging purposes, a reference in the provision to the owner of land is taken to include a reference to any registered native title body corporate under the Commonwealth Native Title Act in relation to any of the land.

(2) To the extent that section 31 applies to a prospecting permit granted other than only for pegging purposes, a reference in the section to the owner of land is taken to include a reference to any registered native title body corporate or registered native title claimant under the Commonwealth Native Title Act in relation to any of the land.

(3) In sections 34, 125, 231(9) and 317 and chapter 13, part 2 a reference to the owner of land is taken to include a reference to any registered native title body corporate or registered native title claimant under the Commonwealth Native Title Act in relation to any of the land.

(4) In section 386X, and schedule 1 other than schedule 1, section 4, a reference to the owner of land is taken to include a reference to any registered native title body corporate or registered native title claimant under the Commonwealth Native Title Act in relation to any of the land.

(5) In this section—

pegging purposes, in relation to a prospecting permit, means purposes necessary to enable the holder of the permit to apply for a mining claim or mining lease over the land for which the permit is granted.

Part 6 Mining districts

11 Mining districts

(1) The chief executive may by gazette notice declare an area of land to be a mining district.

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(2) The notice must—

(a) state the name of the mining district; and

(b) give a description, by map or otherwise, of the location and boundaries of the mining district.

Chapter 2 Prospecting permits

Part 1 Prospecting permit categories and entitlements

13 Definition for pt 1

In this part—

holder, of a prospecting permit, includes a person who is an officer, employee, contractor or agent of the holder if the person is in actual possession of—

(a) the permit; or

(b) the holder's written permission for the person to do something the holder may do under the permit.

14 Categories of prospecting permit

(1) A prospecting permit may be granted for—

(a) a mining district; or

(b) a lot; or

(c) 2 or more adjoining lots owned by the same person.

(2) A prospecting permit under subsection (1)(a) is a ***district prospecting permit***.

(3) A prospecting permit under subsection (1)(b) or (c) is a ***parcel prospecting permit***.

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15 Area of land covered by parcel prospecting permit

(1) A parcel prospecting permit may be granted for all or part of the land of a lot, or 2 or more adjoining lots owned by the same person.

(2) More than 1 parcel prospecting permit may be granted over a lot, or 2 or more adjoining lots owned by the same person.

(3) If an application for a parcel prospecting permit is for only part of the land of a lot, or 2 or more adjoining lots owned by the same person, the permit may be granted for all of the area.

16 Land excluded from prospecting permit

(1) Land is excluded from a prospecting permit if—

(a) it is in the area of a mining claim, mineral development licence or mining lease; or

(b) it is covered by an application for a mining claim, mineral development licence or mining lease that has not been finally decided.

(2) Also, a prospecting permit may be granted for all or part of a fossicking area only if the application for the permit was made, but not decided, before the land became a fossicking area.

(3) However, if the holder of, or applicant for, the mining claim, mineral development licence or mining lease consents in writing to an application for a prospecting permit for land in the area of or covered by the claim, licence or lease, this section does not apply to the application to the extent stated in the consent.

(4) In addition, this section does not apply if—

(a) the prospecting permit holder is the applicant for the mining claim, mineral development licence or mining lease; and

(b) there is no other application for a claim, licence or lease for land in the area of the prospecting permit.

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17 Prospecting permit to be granted to a single person

A prospecting permit may only be issued in the name of a single eligible person.

18 Entitlements under prospecting permit

(1) A holder of a prospecting permit for land may enter the land for—

(a) purposes necessary to enable the holder to apply for a mining claim or mining lease over the land; or

(b) prospecting purposes; or

(c) hand mining for a mineral other than coal.

(2) The holder may—

(a) enter and leave the land using a reasonable type of transport; and

(b) enter and leave the land through land the permit states is access land.

19 Consent required to enter certain land

(1) A parcel prospecting permit holder may enter the surface of a reserve for prospecting purposes only with the written consent of the owner of the reserve.

(2) A district prospecting permit holder may enter the surface of occupied land only with the written consent of the owner of the land.

(3) Also, a prospecting permit holder may enter occupied land for hand mining only with the written consent of the owner of the land.

(5) Further, a prospecting permit holder may enter land within 50m laterally of a place where activities are being carried on under an exploration permit only with the written consent of the exploration permit holder.

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20 Provisions about consents to enter land

(1) This section applies to consents for a prospecting permit holder to enter land.

(2) In the absence of evidence to the contrary, the consent of an owner who is a joint tenant or tenant in common with other owners, is taken to be the consent of all the owners.

(3) If the owner of land can not be easily contacted, a consent may be given for the land by the land's occupier.

Examples of the owner not being easily contacted—

1 The owner does not live in Australia and there is no known current overseas address for the owner.

2 The owner is travelling in Australia and there is no known current address for the owner.

(4) Consent under this section may be given on conditions.

(5) The holder of a consent must comply with the consent's conditions.

Maximum penalty for subsection (5)—10 penalty units.

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 412B, to have also committed the offence.

(6) A consent given for land may be amended or withdrawn by the land's owner (or, if given by the occupier, the occupier) by written notice given to the holder and the chief executive.

Note—

For other relevant provisions about giving the chief executive documents, see section 386O.

(7) Subsection (6) applies despite the Common Provisions Act, section 70.

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Part 2 Other provisions about prospecting permits

21 Application for prospecting permit

An application for a prospecting permit for land must—

(a) be made in the approved form and lodged with the chief executive; and

(b) be accompanied by—

(i) proof, to the chief executive's satisfaction, of the applicant's identity; and

(ii) the fee prescribed under a regulation; and

(c) state the applicant's name, and address for service of notices; and

(d) if the application is for a parcel prospecting permit—

(i) identify, by sketch and description, or in another way acceptable to the chief executive, the land over which the permit is sought and land proposed to be used as access; and

(ii) state the name and address of each owner of occupied land over which the permit is sought; and

(iii) state the name and address of each owner of land proposed to be used as access.

22 Reason for rejection of application to be given

If the chief executive rejects an application for the grant of a prospecting permit, the chief executive must, within 5 business days after deciding to reject, give the applicant a written notice stating the decision and the reasons for it.

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24 Grant of prospecting permit

(1) The chief executive may grant a prospecting permit for land if the chief executive is satisfied an eligible person has—

(a) made a genuine application that complies with this chapter, and otherwise complied with the requirements of this Act; and

(b) deposited the amount of security required to be deposited for the permit.

Note—

If the application relates to acquired land, see also section 10AAC.

(2) If the chief executive is of the opinion that an applicant for a prospecting permit had previously contravened or failed to comply with any provision of this Act, the repealed Acts, any other Act about mining or the *Fossicking Act 1994*, the chief executive may, whether or not that person had been charged or convicted of an offence in respect of that contravention or failure to comply, reject the application.

(3) For subsection (2), a company is taken to have contravened a provision of this Act if the person contravening the provision is—

(a) an officer or employee of the company; or

(b) someone else who is in a position to control or substantially influence the company's affairs.

24A Details of prospecting permit to be recorded in register

The chief executive must record in the register the following details of a prospecting permit—

(a) the identification number of the permit;

(b) the name of the holder;

(c) the address for service of notices on the holder;

(d) the description of land for which the permit is granted;

(e) the term and date of commencement of the permit;

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(f) the conditions, other than conditions prescribed under this Act, to which the permit is subject.

25 Conditions of prospecting permit

(1) It is a condition of each prospecting permit that the holder must carry out improvement restoration for the permit.

(2) A prospecting permit shall be subject to any prescribed conditions and such other conditions as the chief executive shall from time to time impose.

(3) In imposing conditions upon the grant of a prospecting permit the chief executive shall take into consideration the possible effect upon the owner of the land of the grant of the permit having regard to the holder's entitlements under that permit and any other subsisting permits.

(4) The chief executive may from time to time, by notice in writing to the holder of a prospecting permit vary any condition imposed by the chief executive.

(5) Despite subsections (2) to (4), a condition must not be imposed, prescribed or varied if the condition, or the condition as varied, is the same, or substantially the same, or inconsistent with, a prescribed condition under the Environmental Protection Act for carrying out a small scale mining activity.

(6) The holder of a prospecting permit and all persons acting under the authority of the permit shall comply with the conditions for the time being of the permit of which notice has been served on the holder.

(7) To remove doubt, it is declared that a condition may limit the extent of the holder's entitlements under section 18(1).

25AA Additional conditions of prospecting permit relating to native title

(1) Conditions imposed on a prospecting permit by the chief executive under section 25(2) may include native title protection conditions for the permit.

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(2) Subsection (1) does not limit section 25(2).

(3) In this section—

native title protection conditions, for a prospecting permit, means conditions that—

(a) are about ways of minimising the impact of the permit on native title in relation to the land affected by the permit, including ways of accessing the land and ways anything authorised under the permit may be done; and

(b) are identified in the permit as native title protection conditions for the permit.

25A Indigenous land use agreement conditions

(1) This section applies if—

(a) a registered indigenous land use agreement under the Commonwealth Native Title Act provides for the granting of a prospecting permit; and

(b) the State is a party to the agreement; and

(c) the agreement includes a requirement that, if the prospecting permit is granted, it must be granted subject to conditions stated in the agreement (the ***stated conditions***); and

(d) the prospecting permit is granted.

(2) The prospecting permit is subject to the stated conditions.

(3) The stated conditions are taken to be conditions of the permit of which notice has been served on the holder of the prospecting permit.

26 Provision of security

(1) A prospecting permit shall not be granted until the applicant for the permit deposits the security (if any) determined by the chief executive for compliance with the conditions of the prospecting permit and the provisions of this Act and to rectify any actual damage that may be caused by any person

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whilst purporting to act under the authority of the permit to pre-existing improvements for the permit.

(2) If the chief executive fixes an amount of security under subsection (1), the amount must not be less than the amount prescribed under a regulation.

(3) The owner of any land may apply in writing to the chief executive to rectify the damage referred to in subsection (1) that has been caused by any activity allegedly authorised under a prospecting permit in respect of that land.

(4) If the chief executive is satisfied (whether or not upon an application referred to in subsection (3)) that damage referred to in subsection (1) has been caused by any person purporting to act under the authority of a prospecting permit the chief executive shall require that person to take all action necessary to rectify that damage.

(5) The chief executive may, at any time (whether before or after the expiry or cancellation of a prospecting permit), use all or part of the security deposited for the permit to rectify actual damage caused by someone acting under the permit.

(6) If, at any time (whether during or within 20 business days after the expiration of the term of a prospecting permit) the amount or any part of the amount deposited under this section is utilised as provided by subsection (5) or the chief executive considers that, in view of the damage caused or likely to be caused by any person purporting to act under the authority of the prospecting permit or for any other reason, a further amount of security should be deposited in respect of that prospecting permit, the chief executive shall require the holder or former holder of the prospecting permit, within the time specified by the chief executive, to deposit the further security.

(7) The chief executive may accept a bond or a guarantee or indemnity by, or other financial arrangement with, a financial institution, insurance company or another credit provider approved by the chief executive or other form of security acceptable to the chief executive as the whole or part of the security to be deposited under this section.

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(8) It shall be a condition of a prospecting permit that the holder shall deposit security or further security from time to time in accordance with a requirement made as provided by this section.

(9) Subsection (10) applies if an amount of security deposited by a holder of a prospecting permit has not been used when the permit terminates and—

(a) for a parcel prospecting permit—the owner of the occupied land in the area of the permit—

(i) gives the chief executive written approval to refund the security; or

(ii) does not make a claim against the security within—

(A) 20 business days after the termination; or

(B) a longer period (of not more than 3 months) fixed by the chief executive by written notice given to the permit holder and owner; or

(b) for a district prospecting permit—an owner of land in the area of the permit does not make a claim against the security within—

(i) 20 business days after the termination; or

(ii) a longer period (of not more than 3 months) fixed by the chief executive by written notice given to the permit holder and owner.

(10) After deducting the amount the chief executive considers should be held for use under subsection (5), the chief executive may refund the balance of the security.

(11) The chief executive must refund the amount to the permit holder or in accordance with any written direction the holder gives the chief executive.

(12) In the absence of evidence to the contrary, the approval of an owner who is a joint tenant or tenant in common is taken to be the approval of all the owners for subsection (9)(a)(i).

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(13) Subsection (10) does not limit the chief executive's powers under subsection (15).

(14) If—

(a) a prospecting permit holder applies for a mining claim or mining lease; and

(b) the application has not been finally decided when the permit is terminated; and

(c) after the application is decided, an amount held as security under this section is not held as security for the claim or lease;

the amount may be refunded under subsection (9).

(15) If the chief executive accepts a bond, guarantee or indemnity by, or another financial arrangement with, a financial institution, insurance company or credit provider as security under this section, any amount payable to the holder under subsection (9) or (10) must be refunded to the financial institution, insurance company or credit provider and not to the holder of the prospecting permit to which the security relates.

27 Utilisation of security deposit towards subsequent prospecting permit

If the holder of a prospecting permit or an expired prospecting permit makes application for a further prospecting permit, the chief executive may, instead of refunding the whole or part of the security deposited in respect of the existing or expired permit, retain that security or part thereof (together with any further security fixed by the chief executive) as the security (in which case it shall be taken to be or to be part of the security) deposited by the applicant in respect of the application for the further prospecting permit.

28 Compensation

(1) Notwithstanding section 26, the Crown or an owner is entitled to recover, from time to time in the Land Court, compensation

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in respect of damage or injury suffered or loss incurred by reason of a person acting or purporting to act under the authority of a prospecting permit but any moneys paid under that section in respect of rectification of damage the subject of the proceeding shall be taken into account in assessing any compensation.

(2) The holder of a prospecting permit is not liable under this section in respect of damage or injury or loss caused by another person who is not a holder and is not a person authorised by the holder to be in the area of the prospecting permit.

29 Term of prospecting permit

(1) A prospecting permit may be granted for—

(a) if it is a district prospecting permit—1 or more months but not longer than 1 year; or

(b) if it is a parcel prospecting permit—3 months.

(2) A prospecting permit's term must not start before the day the permit is granted.

30 Rights and obligations extended upon application for mining claim etc.

(1) The holder of a prospecting permit who, during the term of the prospecting permit, makes application for the grant of—

(a) a mining claim; or

(b) a mining lease;

in respect of any land in the area of the prospecting permit, shall, during the period from the expiration of the prospecting permit until the determination of the application, for so long as the provisions of this Act and the terms and conditions that would apply if the permit were current are complied with, have all the responsibilities, powers, authorities and duties that the holder would have had in respect of the land the

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subject of the application if the prospecting permit was current.

(2) The entitlements of the holder of a prospecting permit are not reduced or limited by reason only of the holder's application for the grant of a mining claim or a mining lease in respect of any land in the area of the prospecting permit.

31 Chief executive to notify owners of occupied land of grant of parcel prospecting permit

(1) Upon granting a parcel prospecting permit, the chief executive must, within 5 business days after the grant, advise the owner of any occupied land specified in the permit including occupied land (other than a reserve for public road) specified as access.

(2) Where advice is not in writing, the advice shall be confirmed in writing as soon as practicable.

32 Notice of entry under parcel prospecting permit

(1) A parcel prospecting permit holder must give the owner of the land in the area of the permit notice of entry before initial entry is made under the permit.

(2) The notice must be given at least 5 business days before the intended entry (or a shorter time acceptable to the owner and endorsed on the notice).

(3) If the owner can not be easily contacted, the holder may notify the occupier of the land of the intended entry.

Examples of the owner not being easily contacted—

1 The owner does not live in Australia and there is no known current address for the owner.

2 The owner is travelling within Australia and there is no known current address for the owner.

(4) However, subsection (1) does not apply to a parcel prospecting permit holder if—

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(a) the holder satisfies the chief executive it is impracticable to give either the owner or occupier notice of the intended entry; and

(b) the chief executive decides to not require the holder to give notice of the intended entry; and

(c) the chief executive's decision is recorded in the register.

(5) Before recording the decision in the register, the chief executive may require the holder to take the action the chief executive considers appropriate to publicise the intended entry, including, for example, publishing an advertisement in a newspaper or other publication.

33 Prospecting permit not transferable

A prospecting permit is not transferable.

34 Report to chief executive by owner of land

(1) Where a person purports to enter or be upon land under the authority of a prospecting permit, the owner of that land who considers that that person is not authorised to enter or be upon that land or is not complying with any condition of the prospecting permit or of any provision of this Act may report accordingly to the chief executive.

(2) The chief executive shall have the report investigated and shall advise the owner of land who reports under subsection (1) of any action taken upon the report.

36 Cancellation of prospecting permit

(1) The chief executive may at any time, by notice in writing in the approved form served on the holder of a prospecting permit or other person apparently acting under the authority of the permit, cancel the permit.

(2) A notice cancelling a prospecting permit served pursuant to subsection (1) shall state the reasons for the cancellation.

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37 Surrender of prospecting permit

The holder of a prospecting permit may, at any time before the expiration of its term, by notice in writing to the chief executive surrender the permit.

38 Appeals about prospecting permits

(1) A person whose interests are adversely affected by a decision to which this section applies (the ***aggrieved person***) may appeal against the decision to the Land Court.

(2) This section applies to the following decisions of the chief executive—

(a) a decision to refuse to grant a prospecting permit;

(b) a decision to impose a condition on a prospecting permit;

(c) a decision to vary a condition imposed on a prospecting permit;

(d) a decision to require an applicant for, or holder of, a prospecting permit to deposit security;

Note—

For the provision of security, see section 26.

(e) a decision about the use of security deposited by a prospecting permit holder towards rectification of damage caused by noncompliance with permit conditions;

(f) a decision to cancel a prospecting permit.

39 How to start an appeal

(1) An appeal is started by filing a written notice of appeal with the chief executive.

(2) The notice of appeal must be filed within 20 business days after the aggrieved person receives notice of the decision appealed against.

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Note—

For other relevant provisions about filing documents, see section 386O.

(3) However, if—

(a) the decision did not state the reasons for the decision; and

(b) the person asked for a statement of reasons for the decision within the period mentioned in subsection (2);

the person may make the application within 20 business days after the person is given the statement of reasons.

(4) In addition, the Land Court may extend the period for filing the notice of appeal.

(5) The notice of appeal must state the grounds of appeal.

40 Stay of operation of decisions

(1) The Land Court may stay a decision appealed against to secure the effectiveness of the appeal.

(2) A stay—

(a) may be given on conditions the Land Court considers appropriate; and

(b) operates for the period fixed by the Land Court; and

(c) may be revoked or amended by the Land Court.

(3) The period of a stay fixed by the Land Court must not extend past the time when the Land Court decides the appeal.

(4) A decision, or the carrying out of a decision, is affected by the starting of an appeal against the decision only if the decision is stayed.

41 Hearing procedures

(1) In deciding an appeal, the Land Court—

(a) is not bound by the rules of evidence; and

(b) must observe natural justice.

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(2) An appeal is by way of rehearing.

42 Powers of Land Court on appeal

(1) In deciding an appeal, the Land Court may—

(a) confirm the decision appealed against; or

(b) set the decision aside and substitute another decision; or

(c) set aside the decision and return the issue to the chief executive with directions the Land Court considers appropriate.

(2) In substituting another decision, the Land Court has the same powers as the chief executive.

Example—

The Land Court may decide that an unsuccessful applicant for a prospecting permit be granted the permit and impose conditions on it.

(3) If the Land Court substitutes another decision, the substituted decision is taken to be the decision of the chief executive.

43 Minerals taken become property of holder of prospecting permit

All minerals mined as a result of hand-mining activities lawfully carried on under the authority of a prospecting permit cease to be the property of the Crown or the person who had property therein and become the property of the holder of the prospecting permit subject however to the rights to royalty payments under this Act of the Crown or any other person.

44 Royalties in respect of minerals taken under prospecting permit

The holder of a prospecting permit shall pay in respect of all minerals mined or purported to be mined under the authority of that prospecting permit, the royalty prescribed pursuant to chapter 11.

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46 Producing prospecting permit

(1) This section applies if—

(a) a person purports to enter or be on land under the authority of a prospecting permit; and

(b) the owner of the land, or an agent of the owner, asks the person for proof of the person's authority to enter or be on the land.

(2) The person must produce the prospecting permit, or a copy of the permit, to the owner or agent.

(3) If the person fails to comply with subsection (2), the person does not have any entitlements under this Act during the period of the person's noncompliance.

(4) In this section—

copy, of a prospecting permit, includes an extract from the register of the details of the permit recorded in the register.

47 Staying on occupied land

(1) A person entitled to enter occupied land under a district prospecting permit must not enter land at night without the written consent of the land's owner.

Maximum penalty—10 penalty units.

(2) A person entitled to enter occupied land under a parcel prospecting permit must not enter the land at night without the written consent of the land's owner or the chief executive.

Maximum penalty—10 penalty units.

(3) In the absence of evidence to the contrary, the consent of an owner who is a joint tenant or tenant in common is taken to be the consent of all the owners.

(4) If the owner of land can not be easily contacted, a consent may be given for the land by the land's occupier.

Examples of the owner not being easily contacted—

1 The owner does not live in Australia and there is no known current address for the owner.

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2 The owner is travelling within Australia and there is no known current address for the owner.

(5) Consent under this section may be given on conditions.

(6) The chief executive's consent and any consent conditions must be recorded in the register.

(7) A person who enters occupied land at night with a consent under this section must comply with conditions imposed by the owner or occupier of the land or the chief executive.

Maximum penalty—10 penalty units.

Chapter 3 Mining claims

48 Grant of mining claim

(1) A mining claim may be granted over an area of land to an eligible person.

Note—

See section 61 for the requirements for making an application for the grant of a mining claim.

(2) The area of the mining claim must include the whole of the surface area of the land within the area of the mining claim.

Note—

See, however, section 10AAB(3) if land in the area of the mining claim is taken under a resumption law.

49 Only eligible persons to hold mining claims

A mining claim shall not be held by a person who is not an eligible person.

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50 Entitlements under mining claim

(1) During the currency of a mining claim, the holder of the mining claim and any person who actually works the mining claim as agent or employee of the holder—

(a) may in, on or under the area of the mining claim—

(i) prospect for any mineral to which the mining claim applies; and

(ii) for a mining claim other than a prescribed mining claim—hand mine in accordance with the conditions of the mining claim any mineral to which the mining claim applies; and

(iii) for a prescribed mining claim—mine in accordance with the conditions of the mining claim any mineral to which the mining claim applies; and

(b) for the purpose of prospecting or mining as provided in paragraph (a) may—

(i) enter that area; and

(ii) use such machinery, mechanical devices or other equipment as are authorised under this Act to be used for that purpose; and

(iii) erect and maintain a structure (including, where authorised so to do by the mining claim, a temporary residence for a person who is bona fide using the area of the mining claim for a purpose for which it was granted) not being of a permanent nature on that area; and

(c) for the purpose of mining as provided in paragraph (a)(ii) or (iii), may, subject to compliance with the conditions of the mining claim and any other Act or law, make moderate use of explosives where the mining claim specifically authorises that use.

(2) During the currency of the mining claim, the rights of the holder relate, and are taken to have always related, to the whole of the area of the claim.

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(3) During the currency of a mining claim, a person who delivers goods or substances or provides services to the holder may enter that area for that purpose.

(4) Where any Act provides that water may be diverted or appropriated only under authority granted under that Act, the holder of a mining claim shall not divert or appropriate water unless the holder holds that authority.

(5) In this section—

prescribed mining claim means a mining claim that—

(a) applies to corundum, gemstones or other precious stones, and the area of which has been decided by the Minister under section 53; or

(b) has been converted from a mining lease under section 816.

51 Land for which mining claim not to be granted

(1) A mining claim may not be granted for land in the area of or covered by—

(a) an existing mining claim; or

(b) a mining lease; or

(c) a mineral development licence; or

(d) an earlier application for a mining claim, mineral development licence or mining lease that has not been finally decided or withdrawn; or

(e) an exploration permit or earlier application for an exploration permit unless the applicant for the claim gives the chief executive the written consent of the holder of, or applicant for, the permit on or before the last objection day.

(1A) However, subsection (1)(e) does not apply to land in the area of or covered by an exploration permit, or earlier application for an exploration permit, if the applicant for the mining claim

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is the same person as the holder of, or applicant for, the exploration permit.

(2) A mining claim may be granted over the surface of land that is restricted land when the application for the claim was lodged only if—

(a) each relevant owner for the restricted land consents in writing to the application; and

(b) the applicant lodges each relevant owner's consent with the chief executive before the last objection day ends.

(3) A relevant owner for restricted land can not withdraw his or her consent under subsection (2) once it has been lodged with the chief executive.

(4) In this section—

relevant owner, for restricted land, has the meaning given under the Common Provisions Act, section 69.

52 No mining claim in respect of coal

A mining claim may be granted in respect of any specified minerals other than coal.

53 Area and shape of mining claim land

(1) Subject to subsection (1A), the land for which a mining claim may be granted—

(a) must be—

(i) rectangular in shape; or

(ii) of the dimensions prescribed under a regulation; and

(b) must be more or less the prescribed area.

(1A) For a mining claim that applies to corundum, gemstones or other precious stones, the Minister also may grant the claim for an area, of not more than 20ha, decided by the Minister (the ***decided area***).

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(2) Despite subsection (1)(a), the Minister may, for a particular mining claim for which an area is not decided by the Minister, accept an application for a mining claim over land of a different shape.

(2A) In deciding the area of a mining claim for subsection (1A), the Minister must have regard to—

(a) whether the area of land is mineralised; and

(b) whether the area of land is of an appropriate size and shape in relation to the mineralisation; and

(c) the type and location of activities to be carried out under the mining claim.

(3) The prescribed area of the land over which a mining claim for which an area is not decided by the Minister may be granted is—

(a) 1ha; or

(b) where the land is within a mining district or part of a mining district in respect of which, for the purposes of this section, an area is prescribed by regulation, that area;

whichever is the smaller.

(3A) Subsection (3B) applies to a mining claim for which an area is decided by the Minister if the land to which the mining claim applies is within an area prescribed by regulation under subsection (3)(b).

(3B) Despite subsection (1A), the Minister can not decide an area for the mining claim that is more than the area prescribed by regulation.

(4) Where it is found that the area of a mining claim exceeds the prescribed area or the decided area, the mining claim is not thereby invalidated but the following provisions of this subsection shall be complied with.

(5) The chief executive must notify the holder that the land exceeds the prescribed area or decided area.

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(6) If at the expiration of 20 business days after the giving of a notice pursuant to subsection (5)—

(a) the mining claim has not been varied, by agreement between the Minister and the holder, to reduce the area of land to or to less than the prescribed area or decided area; or

(b) the holder has not made application to the Land Court to determine whether the subject area exceeds the prescribed area or decided area or to determine the variation thereof to reduce the area to the prescribed area or decided area;

the Minister shall without further notice cancel the mining claim.

54 Mining claim over reserve only with consent

A mining claim shall not be granted over land that is a reserve except with—

(a) the consent of the owner of that land; or

(b) the consent of the Governor in Council.

55 Restriction upon number of mining claims

(1) A person shall not at any time be the holder of or have an interest, direct or indirect, in more than 2 mining claims.

(2) The Minister may call upon a person to show cause why a mining claim or interest held by that person in contravention of subsection (1) should not be cancelled.

(3) If the Minister is not satisfied that there is good reason why the Minister should not do so, the Minister may cancel the mining claim or interest.

(4) Where, pursuant to subsection (3) an interest only in a mining claim is cancelled, each holder of any other interest in the mining claim shall hold an interest in the mining claim in the same proportion that the holder's original interest bears to the aggregate of the remaining interests.

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61 Application for grant of mining claim

(1) An application for the grant of a mining claim must—

(a) be in the approved form; and

(b) specify the name of each applicant; and

(c) specify the name and address for service of 1 person upon whom any notice may be served on behalf of the applicant or the applicants; and

(d) describe all parcels of land the whole or part of which are the subject of the application and specify the names and addresses of the owner or owners of the land and of land which is to be used as access thereto; and

(e) define the boundary of the area of the proposed mining claim; and

Note—

Section 386R sets out the requirements for defining the boundary of the area of a proposed mining tenement.

(f) define the boundary of any area of land outside the area of the proposed mining claim intended to be used to access the proposed claim area; and

(g) be accompanied by a visual representation of the boundaries and land mentioned in paragraphs (e) and (f); and

(h) identify the mineral or minerals in respect of which the mining claim is sought; and

(i) be lodged; and

(j) be accompanied by each of the following—

(i) proof to the satisfaction of the chief executive of the identity of the applicant;

(ii) such additional copies of the application and other documents lodged therewith as the chief executive requires;

(iii) the prescribed application fee;

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(iv) a work program for the activities to be carried out under the mining claim;

(v) if the application is for a mining claim for which the Minister is to decide an area under section 53—information about the matters mentioned in section 53(2A) for the mining claim.

(2) A person who lodges an application for the grant of a mining claim must provide the chief executive with such information and particulars relating to the requirements set out in subsection (1) as the chief executive requires and on failure to provide that information the chief executive may reject the application.

(3) The chief executive may reject an application for a mining claim in respect of land the whole or part of which appears, on the evidence available to the chief executive, to be the subject of a mining claim, mineral development licence or mining lease or of an application for the grant of a mining claim, mineral development licence or mining lease.

(4) For the purposes of subsection (3) where a mining claim, mineral development licence or mining lease is terminated or an application for a mining claim, mineral development licence or mining lease is abandoned or rejected, the relevant land shall be deemed to continue to be subject to the mining claim, mineral development licence, mining lease or application until the day next following that termination, abandonment or rejection.

63 Priority of mining claim applications

(1) Applications made under this Act for the grant of mining claims for the same land must be considered and decided according to the day on which they are lodged.

(2) If the applications were lodged on the same day—

(a) they take the priority the Minister decides, after considering the relative merits of each application; and

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(b) the chief executive must give each applicant a written notice stating there is competition for priority between the applicant's application and another application or other applications lodged on the same day as the day on which the applicant's application was lodged.

64 Issue of mining claim notice

(1) This section applies if the chief executive is satisfied an applicant for a proposed mining claim—

(a) is eligible to apply for the mining claim; and

(b) has complied with the requirements of this Act for the application.

(2) The chief executive must give the applicant a written notice for the application (the ***mining claim notice***).

(3) The mining claim notice must state the following—

(a) the number of the proposed mining claim;

(b) the date and time the application was lodged;

(c) any documents or other information, in addition to the documents mentioned in section 64A(1)(a), (b) and (d), the applicant must give to each affected person within the meaning of section 64A;

(d) the last day (the ***last objection day***) for lodging objections to the application.

(4) The last objection day must be at least 20 business days after the notice is given to the applicant.

64A Documents and other information to be given to affected persons

(1) The applicant for a proposed mining claim must give the following documents and information to each affected person—

(a) the mining claim notice;

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(b) the application for the mining claim;

(c) any other documents or information mentioned in the mining claim notice under section 64(3)(c);

(d) if the mining claim is for carrying out small scale mining activities—a copy of the small scale mining code.

(2) The documents and other information must be given within the later of the following periods to end—

(a) 5 business days after the mining claim notice is given to the applicant;

(b) if the chief executive at any time decides a longer period—the longer period.

(3) In this section—

affected person means—

(a) an owner of land the subject of the proposed mining claim; or

(b) an owner of land necessary for access to land mentioned in paragraph (a); or

(c) the relevant local government.

64B Declaration of compliance with obligations

(1) The applicant for a proposed mining claim must give the chief executive a statutory declaration that the applicant has complied with section 64A.

(2) The declaration must be given within the later of the following periods to end—

(a) 5 business days after the last objection day for the application for the mining claim;

(b) if the chief executive at any time decides a longer period—the longer period.

(3) Until the declaration is given—

(a) the Minister must not grant the mining claim; and

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(b) the Land Court may refuse to hear any matter about the application.

64C Continuing obligation to notify

(1) This section applies for an application for a proposed mining claim if, after the last objection day but before the hearing day for the application, the applicant gives the chief executive an additional document about the application.

(2) The applicant must give a copy of the document to each affected person within the meaning of section 64A.

65 Chief executive may call conference in some cases

(1) This section applies if—

(a) within 5 business days before the last objection day for an application for a mining claim (or a shorter period allowed by the chief executive), an owner of land affected by the application gives the chief executive a written request for a conference, stating the things the owner wants to discuss about the application; or

(b) for another reason, the chief executive considers it desirable to call a conference to discuss things about a mining claim or an application for a mining claim.

(2) If subsection (1)(a) applies, the chief executive must call a conference about the application, by written notice given to the owner of the land and the applicant.

(3) If subsection (1)(b) applies, the chief executive may call a conference about the mining claim or application, by written notice given to—

(a) the owners of land affected by the mining claim or application; or

(b) the claim holder or applicant; or

(c) anyone else the chief executive considers should be given notice of the conference.

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(4) The notice must state when and where the conference will be held, and what is to be discussed at the conference.

(5) If the conference is about an application, the conference must be held before the last objection day ends.

66 Who may attend conference

(1) Apart from the chief executive, anyone given notice of a conference about an application for a mining claim or a mining claim (a ***section 65 conference***) may attend and take part in the conference.

(2) Also, with the chief executive's approval, someone else may be present to help a person attending the conference.

(3) However, a person may not be represented at the conference by a lawyer.

67 What happens if someone does not attend

The chief executive may hold a section 65 conference even though someone given notice of the conference does not attend the conference.

68 Chief executive's function at section 65 conference

The chief executive must endeavour to help those attending a section 65 conference to reach an early, inexpensive settlement of the things discussed.

69 Agreements and statements at section 65 conference

(1) If parties to a section 65 conference reach agreement about something discussed at the conference, the parties must—

(a) put the agreement into writing; and

(b) sign the agreement; and

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(c) if the agreement is about an application for a mining claim—lodge it with the chief executive on or before the last objection day.

(2) A person attending or present at the conference must not disclose or publish anything said at the conference other than in an agreement mentioned in subsection (1).

(3) Nothing said by a person at the conference is admissible in a proceeding without the person's consent.

70 Land Court may award costs

(1) If—

(a) a person agrees to attend a section 65 conference but does not attend; and

(b) someone else does attend (the ***attending party***);

the attending party may apply to the Land Court for an order requiring the person who did not attend to pay the attending party's reasonable costs.

(2) If the Land Court orders a person to pay the attending party's costs, the Land Court must decide the amount of the costs of attending.

(3) However, the Land Court must not order a person to pay costs if the Land Court is satisfied the person had a reasonable excuse for not attending the conference.

71 Objection to application for grant of mining claim

(1) An owner of relevant land or the relevant local government may, on or before the last objection day ends, lodge a written objection in the approved form to an application for a mining claim.

(2) An owner of land who attends a conference about an application for a mining claim may, even though the time for objecting to the application has ended, lodge an objection to the application within 5 business days after—

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(a) the day the conference ends; or

(b) if the applicant did not attend the conference—the day the owner attended the conference.

(3) An objection referred to in subsection (1) or (2) shall state the grounds of objection and the facts and circumstances relied on by the objector in support of those grounds.

(4) Each objector to an application for the grant of a mining claim shall serve upon the applicant on or before the last date that the objector may lodge an objection to that application a copy of the objection lodged by the objector.

(5) In this section—

relevant land means the land the subject of the proposed mining claim or any other land necessary for access to that land.

71A Objection may be withdrawn

(1) An objection to an application for a mining claim may be withdrawn by the objector giving written notice of the withdrawal to—

(a) the chief executive; and

(b) if the objection has been referred to the Land Court under section 72—

(i) the Land Court; and

(ii) the applicant.

(2) A withdrawal of an objection can not be revoked.

72 Referral to Land Court of application and objections

(1) This section applies if a properly made objection to an application for the grant of a mining claim is lodged.

(2) The chief executive must, within 5 business days after the later of the following, refer the application and all properly made objections to it to the Land Court for hearing—

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(a) the last objection day for the application;

(b) if an objection is lodged after the last objection day under section 71(2)—the time for lodging an objection under that subsection ends.

(3) The Land Court must fix a date for the hearing and immediately give written notice of the date to each of the following—

(a) the chief executive;

(b) the applicant;

(c) each person who has lodged a properly made objection to the application.

(4) The hearing date must be at least 20 business days after the later of the following—

(a) the last objection day for the application;

(b) the day a section 65 conference about the application ends.

(5) If all properly made objections referred to the Land Court under subsection (2) are withdrawn under section 71A before the Land Court gives an instruction or makes a recommendation to the Minister under section 78, the Land Court may remit the matter to the chief executive.

(6) In this section—

properly made objection means an objection—

(a) lodged under section 71; and

(b) for which section 71(4) has been complied with; and

(c) that has not been withdrawn.

73 Rejection of application for grant of mining claim for noncompliance

(1) An application for the grant of a mining claim may be rejected by the Minister if the applicant fails to comply with any of the applicable provisions of this chapter.

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(2) The Minister must, within 5 business days after deciding to reject, give the applicant written notice of the decision and the reasons for it.

74 Grant of mining claim to which no objection is lodged

(1) This section applies to an application for a mining claim for land if—

(a) no-one objects to the application on or before the last objection day; and

(b) at least 5 business days have passed since the end of any section 65 conference about the application.

(2) The Minister may grant a mining claim for the land to an applicant for the mining claim only if the Minister is satisfied—

(a) the application complies with this chapter and the requirements of this Act have otherwise been complied with; and

(b) any consents needed in relation to the land have been obtained; and

(c) if the mining claim is for other than small scale mining activities—an environmental authority for all activities authorised by the proposed mining claim has been issued.

Note—

If the application relates to acquired land, see also section 10AAC.

(3) Without limiting subsection (2), the Minister may refuse to grant the mining claim if the Minister considers the grant is not in the public interest.

(4) The Minister must, within 5 business days after the grant, give the holder of the mining claim written notice of the grant.

(5) The holder must give written notice of the grant to the owners of land covered by the claim.

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(6) The notice by the holder must be given within 20 business days after the holder receives notice of the grant.

75 Referral to Land Court of application to which no objection lodged

(1) Despite section 74, the Minister may refer an application for the grant of a mining claim to the Land Court for hearing.

(2) The Land Court must fix a date for the hearing and immediately give written notice of the date to each of the following—

(a) the Minister;

(b) the applicant;

(c) the EPA administering authority.

(3) The date must be at least 20 business days after the later of the following—

(a) the last objection day for the application;

(b) the day a section 65 conference about the application ends.

76 Referral to Land Court of issue of reserve owner's consent

(1) This section applies if the Minister is not satisfied an owner of a reserve consented to an application for a mining claim over the reserve.

(2) The Minister must, within 5 business days after the later of the following, refer the issue of consent to the Land Court for its consideration—

(a) the last objection day for the application;

(b) the day a section 65 conference about the application ends.

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(3) The Land Court must fix a date for the hearing and immediately give written notice of the date to each of the following—

(a) the Minister;

(b) the applicant;

(c) the EPA administering authority;

(d) the owner of the reserve.

(4) The date must be at least 20 business days after the later of the following—

(a) the last objection day for the application;

(b) the day a section 65 conference about the application ends.

77 Land Court hearing

(1) The Land Court must hear and decide all issues in relation to an application for a mining claim and any objections to the application at the same hearing.

(2) At a hearing pursuant to subsection (1) the Land Court shall take such evidence, shall hear such persons and inform itself in such manner as it considers appropriate in order to determine the relative merits of the application, objections and other matters (if any) and shall not be bound by any rule or practice as to evidence.

(3) The Land Court shall not entertain an objection to an application or any ground thereof or any evidence in relation to any ground if the objection or ground is not contained in an objection that has been duly lodged in respect of the application.

(4) The Land Court may direct an inspection or view of the land the subject of the hearing.

(5) Nothing in subsection (1) shall prevent the adjournment from time to time of a hearing.

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(6) Nothing in subsection (1) shall prevent the question of compensation being determined by the Land Court pursuant to section 85.

(7) The Minister may require at any time the Land Court to advise the reasons why a hearing under this section has not been finalised.

78 Land Court's determination on hearing

(1) Upon the hearing by the Land Court under this chapter of all matters in respect of an application for the grant of a mining claim the Land Court may—

(a) instruct the Minister to reject the application;

(b) instruct the Minister to grant the mining claim—

(i) upon compliance with any terms and conditions imposed by the Minister on the applicant with respect to the application or the grant; and

(ii) in the case where the application relates to land that is a reserve and the consent of the owner of the reserve to the grant has been obtained;

(c) in the case where the application relates to land that is a reserve and the owner of the reserve does not consent to the grant of the mining claim—

(i) make an instruction referred to in paragraph (a); or

(ii) recommend to the Minister that the Governor in Council should consent to the grant of the mining claim and the terms and conditions (if any) to which the mining claim should be subject.

(2) The Land Court shall not—

(a) give an instruction to the Minister directed towards the grant of a mining claim;

(b) make a recommendation to the Minister directed towards the giving of consent by the Governor in Council to the grant of a mining claim;

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if it is satisfied that—

(c) the provisions of this chapter have not been complied with; or

(d) the public interest would be adversely affected by the grant of the mining claim; or

(e) there is good reason to refuse to grant the mining claim.

(3) The Land Court may give an instruction or make a recommendation referred to in subsection (2) notwithstanding that the question of compensation has not been determined as provided in section 85.

(4) The Land Court on the application of an objector or owner may award costs against an applicant for a mining claim who abandons the application or does not pursue the application at a hearing.

(5) The Land Court on the application of an applicant for a mining claim may award costs against an objector who withdraws the objection or does not pursue the objection at a hearing.

79 Consent to grant of mining claim over reserve by Governor in Council

(1) After considering a recommendation made pursuant to section 78(1)(c)(ii) by the Land Court in respect of the application for the grant of a mining claim, the Minister shall either reject the application or recommend to the Governor in Council that the Governor in Council consent to the grant.

(2) The Governor in Council may, upon the recommendation of the Minister, consent (subject to such terms and conditions as the Governor in Council determines) to the grant of a mining claim over land that is reserve.

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80 Grant of mining claim at instruction of Land Court or with consent of Governor in Council

(1) Upon the instruction of the Land Court so to do or the consent to the grant by the Governor in Council, the Minister shall grant the relevant mining claim if the Minister is satisfied that—

(a) all necessary consents to the grant have been obtained; and

(b) the question of compensation as provided in section 85 has been determined.

Note—

However, if the application relates to acquired land, see also section 10AAC.

(2) The Minister must, within 5 business days after the grant, give the holder of the mining claim written notice of the grant.

(3) The holder of the mining claim must give written notice of the grant to the owners of land covered by the claim.

(4) The notice must be given within 20 business days after the holder receives notice by the holder of the grant.

81 Conditions of mining claim

(1) Each mining claim shall be subject to each of the following—

(a) a condition that the holder shall use the area of the mining claim bona fide for the purpose for which the mining claim was granted and in accordance with this Act and the conditions of the mining claim and for no other purpose;

(b) if the holder uses land outside the boundary of the area of the mining claim for access to the area of the mining claim, a condition that the holder may use the land only for the following purposes—

(i) to transport, by road across the surface of the land, something that is reasonably necessary to allow the

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holder to carry out an authorised activity for the mining claim;

(ii) to transport, by road across the surface of the land, any minerals mined under the authority of a mining tenement held by the holder;

(iii) to construct road transport infrastructure across the surface of the land that is reasonably necessary for the purpose of transporting a thing or mineral mentioned in subparagraph (i) or (ii);

(c) a condition that the holder must—

(i) comply with the mandatory provisions of the small scale mining code to the extent the code applies to the holder; and

(ii) ensure any other person carrying out an authorised activity for the mining claim complies with the mandatory provisions of the small scale mining code to the extent the code applies to the holder;

(d) if the mining claim is granted or renewed for a term of more than 5 years—a condition that the holder must, within 1 month after the fifth anniversary of the following days, give the chief executive a work program for activities to be carried out under the mining claim for the remaining term of the claim—

(i) for a grant of a mining claim—the day the claim is granted;

(ii) for a renewed mining claim—the day the term of the renewed claim started;

(e) a condition that the holder shall furnish at such times and in such manner as required by the Minister reports, returns, documents and statements and other materials whatever;

(f) a condition that the holder shall maintain the surface of the area of the mining claim in a tidy state during the term of the mining claim;

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(g) a condition that the holder must carry out improvement restoration for the mining claim;

(h) a condition that prospecting and mining shall be conducted in the area of the mining claim by such method or in such manner as is provided for in or applies in respect of the mining claim;

(i) a condition that the holder—

(i) shall not erect any permanent building or other structure whatever; and

(ii) prior to the termination of the mining claim, for whatever cause, shall remove any building or structure erected by the holder and all mining equipment and plant;

on or in the area of the mining claim;

(j) a condition that without the prior approval of the Minister the holder shall not obstruct or interfere with any right of access had by any person in respect of the area of the mining claim;

(k) where the mining claim is in respect of land that is a reserve, a condition that the holder shall comply with the terms and conditions upon which the consent of the owner or of the Governor in Council to the grant of the mining claim was given;

(l) a condition that the holder shall make all payments of compensation and comply with all terms of any agreement or determination relating to compensation at the time or times as agreed or determined pursuant to section 85 or 86;

(m) a condition that the holder—

(i) shall pay the rental as prescribed; and

(ii) shall pay the royalty as prescribed; and

(iii) shall pay all local authority rates and charges lawfully chargeable against the holder in respect of the area of the mining claim; and

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(iv) shall deposit as required by the Minister any security from time to time under this Act;

(n) if the area of the mining claim has not been surveyed and a physical monument is used to define the area's boundary—a condition that the holder must maintain the monument;

(o) a condition that the holder shall comply with this Act and other mining legislation;

(p) such other conditions as are prescribed;

(q) such other conditions as the Minister may impose (including such conditions as the Land Court may determine pursuant to this chapter).

(1AA) Without limiting subsection (1), the Minister may impose a condition on a mining claim if the Minister considers the condition is in the public interest.

(2) If in any case there is conflict between a condition determined by the Land Court and a condition determined by the Governor in Council, then to the extent of the conflict the determination of the Governor in Council shall prevail.

(3) Despite subsections (1) to (2), a condition must not be determined, imposed or prescribed if it is the same, or substantially the same, or inconsistent with, a relevant environmental condition for the mining claim.

(4) A mining claim shall contain a condition as to the work commitment required of the holder.

(5) Notwithstanding subsection (1), if the applicant for a mining claim satisfies—

(a) the Minister; or

(b) the Land Court when giving an instruction under this chapter; or

(c) the Governor in Council when giving consent to the grant of a mining claim under this chapter;

that any of the conditions prescribed in subsection (1)(g), (i)(ii) and (n) should not be imposed the mining claim may be

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granted without the imposition of that condition or those conditions.

81B Other agreement conditions

(1) This section applies if—

(a) a registered indigenous use agreement under the Commonwealth Native Title Act, or an agreement mentioned in section 31(1)(b) of the Commonwealth Native Title Act, provides for the grant, renewal or variation of, or another act concerning, a mining claim; and

(b) the State is a party to the agreement; and

(c) the agreement includes a requirement that, if the act is done, the mining claim must be subject to conditions stated in the agreement (the ***stated conditions***); and

(d) the act is done.

(2) The mining claim is subject to the stated conditions.

82 Variation of conditions of mining claim

(1) The conditions to which a mining claim is for the time being subject may be varied by the Minister in terms not inconsistent with this Act upon the agreement in writing of the holder of the mining claim.

(2) However, the Minister must not vary a condition of a mining claim if the condition as varied is the same or substantially the same as, or inconsistent with, a relevant environmental condition for the mining claim.

(3) Without limiting subsection (1), the Minister may refuse to vary a condition of a mining claim if the Minister considers the variation is not in the public interest.

(4) A mining claim that is duly varied pursuant to subsection (1) shall thereafter until again varied, be subject to its conditions as so varied.

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(5) The chief executive must record in the register the details of every variation of a mining claim.

83 Provision of security

(1) Before a mining claim is granted or renewed, the Minister taking into consideration the work program mentioned in section 61(1)(j)(iv) shall determine the amount of the security to be deposited by the holder of that mining claim as reasonable security for—

(a) compliance with the conditions of the mining claim; and

(b) compliance with the provisions of this Act; and

(c) rectification of any actual damage that may be caused by any person whilst purporting to act under the authority of the mining claim to pre-existing improvements for the mining claim; and

(d) amounts (other than penalties) payable to the State under this Act.

(2) The Governor in Council, when giving consent to the grant of a mining claim pursuant to section 79, may determine the amount of the security to be deposited by the holder of the mining claim.

(3) The Land Court, when instructing the Minister to grant an application for the grant of a mining claim, may determine the amount of the security to be deposited by the holder of the mining claim.

(4) Where, in respect of an application for the grant of a mining claim, an amount of security is determined by the Governor in Council pursuant to subsection (2) or by the Land Court pursuant to subsection (3), that amount shall be determined by the Minister as the security pursuant to subsection (1) in respect of that mining claim.

(5) In respect of an application for the grant of a mining claim, an amount determined by the Governor in Council shall prevail over an amount determined by the Land Court.

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(6) A mining claim shall not be granted or renewed until the applicant for the grant or renewal of the mining claim deposits the security as determined under this section.

(7) If the Minister is satisfied that any condition of the mining claim or any provision of this Act has not been complied with or that damage referred to in subsection (1)(c) has been caused by any person purporting to act under the authority of the mining claim or who enters land upon the instruction of the holder, the Minister may require that person to take all action necessary to rectify that noncompliance or damage and, save where the person was not the holder and was not upon the land with the holder's approval at the time the damage was caused, may utilise for that purpose the whole or part of the amount of the security deposited in respect of that mining claim.

(8) If, at any time (whether during, or within 20 business days after the expiration of the term of a mining claim) the amount or any part of the amount deposited under this section is utilised under subsection (7) or the Minister considers that, in view of the damage caused or likely to be caused by any person purporting to act under the authority of the mining claim or upon the instruction of the holder or for any other reason, a further amount of security should be deposited in respect of that mining claim, the Minister shall require the holder or former holder of the mining claim, within the time specified by the Minister to deposit the further security.

(9) The Minister may make a requirement referred to in subsection (8) notwithstanding that the amount of the security deposited was originally determined by the Governor in Council or the Land Court.

(10) The Minister may accept a bond or a guarantee or indemnity by, or other financial arrangement with, a financial institution, insurance company or another credit provider approved by the Minister or other form of security acceptable to the Minister as the whole or part of the security to be deposited under this section.

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(11) It shall be a condition of a mining claim that the holder shall deposit security or further security from time to time in accordance with a requirement made as provided by this section.

(12) If a mining claim terminates, the Minister may, not earlier than 20 business days after the termination, refund the amount of security held for the mining claim, after deducting any amount used under subsection (7).

(13) The Minister must refund the amount to the holder of the claim or in accordance with any written direction the holder gives to the Minister.

(14) However, before refunding the security, the Minister may also deduct the amount the Minister considers appropriate to apply in the following order towards—

(a) rectifying anything caused by noncompliance with—

(i) a condition of the mining claim; or

(ii) an order given to the holder by the Minister;

(b) amounts (other than penalties) the holder owes to the State under this Act or the conditions of the mining claim (including amounts that became payable before or after the termination of the claim);

(c) rates and charges (including interest on unpaid rates and charges) owing to a local government for the mining claim by the former holder.

(15) Subsection (12) does not limit the Minister's powers under subsection (16).

(16) If the Minister accepts a bond, guarantee or indemnity by, or another financial arrangement with, a financial institution, insurance company or credit provider as security under this section, any amount payable to the holder must be refunded to the financial institution, insurance company or credit provider and not to the holder of the mining claim to which the security relates.

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84 Utilisation of security deposit towards subsequent mining claim

If the holder of a mining claim or an expired mining claim makes application for a further mining claim, the Minister may, instead of refunding the whole or part of the security deposited in respect of the existing or expired mining claim, retain that security or part thereof (together with any further security fixed by the Minister) as the security (in which case it shall be taken to be or to be part of the security) deposited by the applicant in respect of the further mining claim.

85 Compensation to be settled before grant or renewal of mining claim

(1) A mining claim shall not be granted or renewed unless—

(a) compensation has been determined (whether by agreement or by determination of the Land Court) between the applicant and each person who is the owner of land the subject of the application and of any surface access to that land (each an ***interested party***); or

(b) there is no person (other than the applicant) who is the owner of any of the land referred to in paragraph (a);

and the conditions of the agreement or determination have been or are being complied with by the applicant.

(2) For the purposes of subsection (1)(a), where the Land Court makes a determination of an amount of compensation, that compensation is not determined until—

(a) where no appeal against that determination is lodged within the period prescribed therefor—upon the expiration of that period; or

(b) where an appeal is duly lodged against that determination—upon the determination of that appeal.

(3) An agreement made pursuant to subsection (1)(a) shall not be effective unless and until—

(a) it is in writing signed by or on behalf of the parties; and

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(b) it is filed.

(4) For subsection (1)(a), an interested party may, at any time before compensation is determined by agreement, apply in writing to the Land Court to have the Land Court determine the amount of compensation.

(5) Upon an application made under subsection (4), the Land Court shall settle the amount of compensation an owner of land is entitled to as compensation for—

(a) deprivation of possession of the surface of land of the owner;

(b) diminution of the value of the land of the owner or any improvements thereon;

(c) diminution of the use made or which may be made of the land of the owner or any improvements thereon;

(d) severance of any part of the land from other parts thereof or from other land of the owner;

(e) any surface rights of access;

(f) all loss or expense that arises;

as a consequence of the grant or renewal of the mining claim.

(6) In assessing the amount of compensation payable under subsection (5)—

(a) where it is necessary for the owner of land to obtain replacement land of a similar productivity, nature and area or resettle himself or herself or relocate his or her livestock and other chattels on other parts of his or her land or on the replacement land, all reasonable costs incurred or likely to be incurred by the owner in obtaining replacement land, the owner's resettlement and the relocation of the owner's livestock or other chattels as at the date of the assessment shall be considered;

(b) no allowance shall be made for any minerals that are or may be on or under the surface of the land concerned;

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(c) if the owner of land proves that the status and use currently being made (prior to the application for the grant or renewal of the mining claim) of certain land is such that a premium should be applied, an appropriate amount of compensation may be determined;

(d) loss that arises may include loss of profits to the owner calculated by comparison of the usage being made of land prior to the lodgement of the relevant application for the grant or renewal of a mining claim and the usage that could be made of that land after the grant or renewal;

(e) an additional amount shall be determined to reflect the compulsory nature of action taken under this chapter which amount, together with any amount determined pursuant to paragraph (c), shall be not less than 10% of the aggregate amount determined under subsection (5).

(7) In any case the Land Court may determine the amounts and the terms, conditions and times when payments aggregating the total compensation payable shall be payable.

(8) The Land Court's determination of any matter under this section shall be deemed to be an agreement between the parties and shall be given effect accordingly.

(9) The Land Court shall give written notice of its determination to all parties and may make such order as to costs between the parties to the determination as it thinks fit.

(10) An amount of compensation decided by agreement between the parties or the Land Court is binding on the parties and the parties' personal representatives, successors and assigns.

85A Minister may refuse to grant mining claim if compensation not determined

(1) This section applies if—

(a) a person makes an application for the grant of a mining claim; and

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(b) compensation in relation to the mining claim has not been determined by agreement between the applicant and each owner of land, or by determination of the Land Court, as mentioned in section 85(1)(a); and

(c) an application under section 85(4) has not been made to the Land Court for a determination of the amount of compensation in relation to the mining claim; and

(d) 3 months have elapsed since—

(i) if no objection was lodged in relation to the application for the grant of the mining claim—the last objection day for the application; or

(ii) if, under section 72(5), the Land Court remitted a matter relating to the mining claim to the chief executive—the day the Land Court remitted the matter; or

(iii) if, under section 78(1)(b), the Land Court instructed the Minister to grant the mining claim—the day the Land Court gave the instruction; or

(iv) if the Governor in Council consented to the grant of the mining claim—the day the Governor in Council consented to the grant.

(2) The Minister may refuse to grant the mining claim.

(3) This section does not limit any other power to refuse to grant a mining claim.

86 Appeal against Land Court's determination upon compensation

(1) A party aggrieved by a determination of the Land Court made under section 85 may, within 20 business days of the date of that determination or within such further period as the Land Appeal Court, on the application of that party in that behalf prior to the lodgement of the appeal, considers appropriate in any particular circumstances, appeal against the determination to the Land Appeal Court.

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(2) The appeal shall be instituted by, within the time and in the manner prescribed—

(a) lodging in the Land Court, written notice of appeal which shall include the grounds of appeal; and

(b) serving copies of the notice of appeal on the chief executive and each other party.

(3) The Land Appeal Court shall have jurisdiction to hear and determine an appeal under this section.

(4) Upon hearing an appeal under subsection (1) the Land Appeal Court may—

(a) vary the determination of the Land Court in such a way as it thinks just; or

(b) disallow the appeal and confirm the determination of the Land Court;

and may make such order as to costs of the appeal as it thinks fit.

(5) In deciding an appeal, the Land Appeal Court must consider the things relevant to the appeal that the Land Court was required to consider in making the decision appealed against.

(6) The Land Appeal Court shall not admit further evidence upon an appeal from a determination of the Land Court under subsection (1) unless—

(a) it is satisfied that admission of the evidence is necessary to avoid grave injustice and there is sufficient reason that the evidence was not previously adduced; or

(b) the appellant and respondent agree to its admission.

(7) The determination of the Land Appeal Court on appeal shall be final and conclusive.

86A Security for costs of appeal

(1) This section applies when an appeal under section 86 is lodged.

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(2) A further step can not be taken in the appeal until security for the costs of the appeal has been lodged under this section.

(3) The registrar of the Land Court must, within 10 business days, decide the form and amount of the security.

(4) The registrar must give the appellant written notice of the decision as soon as practicable after making it.

(5) The appellant must lodge the security in the decided form and amount within 15 business days after the giving of the notice.

(6) If the appellant does not comply with subsection (5), the appeal lapses.

87 Public trustee may act in certain circumstances

(1) If there is doubt as to the identity of the owner of land or the owner of land can not be found, the Land Court may determine that the public trustee shall represent the owner for the purpose of any negotiation or proceeding under section 85 or 86.

(2) Any action taken or thing done or omitted to be done by the public trustee as representative of the owner of land pursuant to subsection (1) shall be taken for all purposes to be taken, done or omitted by that owner.

(3) Where, pursuant to subsection (2) the public trustee represents an owner of land, for the purposes of this chapter any moneys paid to the public trustee under any agreement or determination made under section 85 or 86 shall be deemed to have been paid to the owner.

89 Reasons for rejection of application for grant of mining claim

If the Minister rejects an application for the grant of a mining claim, the Minister must, within 5 business days after deciding to reject, give the applicant a written notice stating the decision and the reasons for it.

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91 Initial term of mining claim

(1) The initial term of a mining claim is the period not greater than 10 years approved by the Minister, unless the claim is sooner terminated.

(2) Despite subsection (1), the term of the mining claim must not be for a period longer than the period for which compensation has been agreed or determined under section 85 or 86.

(3) The initial term of a mining claim commences on the first day of the month that next follows the day the mining claim is granted.

(4) From the grant of a mining claim to the commencement of the initial term thereof the holder shall have all the entitlements, powers, duties and functions the holder has during the term of the mining claim except section 95 shall not apply.

92 Mining claim may be specified it is not renewable

(1) If it is considered that the land the subject of the application for the grant or renewal of a mining claim is or will be required for some purpose other than mining, the mining claim may be granted or renewed subject to a condition that the holder is not entitled to have the mining claim renewed.

(2) Where a mining claim is granted or renewed subject to a condition referred to in subsection (1), the applicant shall be advised the reasons therefor.

93 Renewal of mining claim

(1) The holder of a mining claim, including a mining claim that is subject to a condition referred to in section 92, may, at least 6 months (or such shorter period as the Minister in the particular case allows) prior to and not more than 12 months before the expiration of the current term of the mining claim, make application for renewal of the mining claim.

(2) An application for renewal of a mining claim shall—

(a) be made in the prescribed way to the Minister;

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(b) be accompanied by a work program for the activities to be carried out under the renewed mining claim;

(c) be accompanied by the prescribed application for renewal fee.

(3) Within 5 business days after an application for renewal of a mining claim is made, the holder must—

(a) give copies of the application and of any documents or information prescribed by regulation to the following persons (each ***an interested party***)—

(i) each owner of land the subject of the mining claim;

(ii) each owner of land outside the boundary of the area of the mining claim the holder intends to use to access the area of the mining claim; and

(b) if, in relation to the grant or renewal of the mining claim, an agreement for compensation has been made with an interested party under section 85, or the Land Court has determined the compensation for an interested party under that section—give a copy of the most recent agreement or determination to the interested party.

(4) Subsection (5) applies for an application for renewal of a mining claim if—

(a) if the application relates to a mining claim subject to a condition that the holder is not entitled to have the mining claim renewed—

(i) the Minister is satisfied the mining claim should be renewed; and

(ii) if the condition was imposed by the Governor in Council—the Governor in Council consents to the renewal; and

(iii) if the condition was imposed by the Land Court—the Land Court consents to the renewal; and

(b) the Minister is satisfied—

(i) the holder has complied with the conditions of the mining claim; and

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(ii) the holder has complied with this Act and other mining legislation applicable to the holder relating to the mining claim; and

(iii) the area of the mining claim still contains workable quantities of mineral or mineral bearing ore.

(5) The Minister must grant a renewal of the mining claim in the name of the holder for a further term not greater than 10 years.

(6) The grant must be subject to—

(a) the conditions of the mining claim; and

(b) any other conditions determined by the Minister.

(7) Despite subsection (5), the further term of the mining claim must not be for a period longer than the period for which compensation has been agreed or determined under section 85 or 86.

(8) Despite subsection (5), the Minister may refuse the renewal if the Minister considers the renewal is not in the public interest.

Note—

If the application relates to acquired land, see also section 10AAC.

(9) Despite subsection (5), the Minister may also refuse the renewal if—

(a) compensation is to be determined as mentioned in section 85(1)(a) for the renewal of the mining claim; and

(b) the compensation is not determined within 3 months after the day the current term of the claim would, apart from section 93A, end; and

(c) an application has not been made to the Land Court as mentioned in section 85(4).

(10) Without limiting subsection (6), the Minister may determine a condition of the renewed mining claim if the Minister considers the condition is in the public interest.

(11) The Minister shall not reject an application for renewal of a mining claim until the Minister has, by notice in writing in the approved form served on the holder of the mining claim,

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called upon the holder to show cause within the time specified therein why the application should not be rejected and such cause has not been shown to the satisfaction of the Minister.

(12) The holder of a renewed mining claim must give written notice of the claim's renewal to the owners of the land in the area of the claim.

(13) The notice must be given within 20 business days after the holder receives notice of the renewal.

93A Continuation of claim while application being dealt with

(1) Subsection (2) applies if—

(a) a properly made application for renewal of a mining claim is not withdrawn, refused or granted before the claim's expiry day ends; and

(b) after the expiry day, the holder—

(i) continues to pay rental on the claim and other amounts required to be paid under this Act; and

(ii) otherwise complies with this Act and the claim conditions.

(2) The claim continues in force subject to the rights, entitlements and obligations in effect immediately before the end of the expiry day until the application is withdrawn, refused or granted.

(3) In this section—

properly made application, for renewal of a mining claim, means an application that complies with section 93(2).

93B When term of renewed claim starts

(1) If a mining claim is renewed before its expiry day ends, the term of the renewed claim starts on the day after the expiry day.

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(2) If the claim is renewed after the expiry day, the term of the renewed claim is taken to have started on the day after the expiry day.

93C When new conditions of renewed claim start

(1) If a renewed mining claim is subject to conditions (the ***new conditions***) different from, or not included in, the claim conditions applying immediately before its renewal, the new conditions apply from the later of the following—

(a) the start of the term of the renewed claim;

(b) the day the renewal is granted.

(2) However, if the claim is continued in force under section 93A, the holder must pay rental on the claim from the day after its expiry day at the rate that would have been payable, from time to time, if the renewed mining claim had been renewed on the day after the expiry day.

(3) Subsection (2) applies even though payment of rental may be a condition of the claim.

93D Renewal of claim must be in name of last recorded transferee

(1) This section applies if a transfer of a mining claim is registered under the Common Provisions Act—

(a) after the date on which an application for renewal of the claim is made; and

(b) before the application is decided by the Minister.

(2) Any renewal granted on the application must be in the name of the transferee under the last transfer registered before the grant of the renewal.

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94 Reasons for rejection of application for renewal of mining claim

If the Minister rejects an application for the renewal of a mining claim, the Minister must, within 5 business days after deciding to reject, give written notice to the applicant stating the reasons for rejection.

95 Rental payable on mining claim

(1) Upon the grant of a mining claim rental shall first be payable thereon with respect to the period from the commencement of the term of the mining claim to 31 August of that year (the ***first rental period***) and shall be paid within 20 business days (or such longer period as the Minister in the particular case approves) of the grant of the mining claim.

(2) The amount of the rental payable in respect of the first rental period shall be an amount that bears to the rental payable for a rental year prescribed pursuant to subsection (4) for the rental year in which the first rental period falls the same proportion that the number of whole calendar months of the first rental period bears to 12.

(3) In respect of each rental year or part thereof of the term of a mining claim (other than the first rental period) a full rental year's rental shall be payable in advance not later than 31 August of the previous rental year.

(4) If the full rental payable for a rental year is paid in advance as prescribed by subsection (3), the amount of the rental shall be the amount prescribed under a regulation for that rental year.

(5) If, for a particular rental year, rental is not paid in advance as prescribed by subsection (3)—

(a) the chief executive shall, prior to 30 September of that rental year, notify the holder of and any person holding a recorded interest in the mining claim that the rental has not been paid as prescribed by subsection (3) and of the amount of rental payable as prescribed by paragraph (b); and

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(b) the amount of the full rental payable for the rental year shall be payable before 1 December of that rental year and shall be an amount equal to the amount prescribed under a regulation for that rental year plus an amount equal to 15% of that prescribed amount.

(6) Upon the renewal of a mining claim, no further rental shall be payable in respect of the period that, if the renewal was a grant of a mining claim, would be the first rental period except where that period commences on 1 September.

(7) Except as provided in subsection (8), where in any rental year a mining claim is surrendered or terminated through effluxion of time and is not renewed, there shall be refundable to the last holder of the mining claim an amount that bears to the amount of the rental that was paid in respect of that rental year the same proportion that the number of whole calendar months from—

(a) the date of surrender or termination; or

(b) the date of rejection of the application for renewal;

whichever is the later, to 31 August of that rental year bears to 12.

(8) No amount shall be refunded pursuant to subsection (7) where a mining claim is surrendered within its first rental period after its original grant.

105 Mining other minerals

(1) The holder of a mining claim may lodge an application in writing with the Minister for approval to mine specified minerals, being minerals not specified in the mining claim, in respect of the area of the mining claim.

(2) The application shall be accompanied by the prescribed fee.

(3) The application and any other application for the grant of a mining lease for the same minerals must be considered and decided according to the day on which they are lodged.

(4) If the applications were lodged on the same day—

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(a) they take the priority the Minister decides, after considering the relative merits of each application; and

(b) the chief executive must give each applicant a written notice stating there is competition for priority between the applicant's application and another application, or other applications, lodged on the same day as the day on which the applicant's application was lodged.

(5) Upon the Minister approving an application under this section and compliance by the applicant with any conditions imposed by the Minister, the relevant mining claim shall be deemed to include the specified minerals and shall be subject to such additional conditions as are prescribed in respect of such mining claim or as the Minister considers appropriate.

(6) The Minister shall not approve an application under this section that could adversely affect any conditions imposed in respect of the mining claim by the Land Court or the Governor in Council.

106 Contravention by holder of mining claim

(1) If the Minister considers that the holder of a mining claim—

(a) has carried out activities that are not bona fide for the purposes for which the mining claim was granted; or

(b) has failed to pay the royalty or any other moneys payable thereunder (other than rental) or in respect thereof by the due date for payment; or

(c) has failed to comply with any condition that is to be observed and performed by the holder under or in respect of the mining claim, other than a condition with respect to matters referred to in subsection (2)(a) or (b);

the Minister may—

(d) cancel the mining claim; or

(e) impose on the holder a penalty not exceeding 100 penalty units.

(2) If the Minister considers that the holder of a mining claim—

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(a) in any rental year has failed after notice given to the holder in accordance with section 95(5) to pay before 1 December of that rental year the amount of the rental payable under that section by that date in respect of that mining claim; or

(b) has failed to pay a penalty imposed on the holder pursuant to subsection (1)(e) within the time allowed for the payment by the Minister;

the Minister may cancel the mining claim.

(3) The Minister shall not act pursuant to subsection (1) until the Minister has, by notice in writing in the approved form served on the holder of the mining claim, called upon the holder to show cause within the time specified therein why the mining claim should not be cancelled or a penalty imposed and served a copy of the notice on every person who currently holds a recorded interest in respect of the mining claim at the person's address last recorded by the Minister and such cause has not been shown to the satisfaction of the Minister.

(4) If the Minister pursuant to this section cancels a mining claim, the Minister shall notify the holder accordingly stating the reason for the cancellation.

(5) The cancellation of a mining claim under this section shall take effect on the day next following the Minister's determination to cancel the mining claim.

107 Surrender of mining claim

(1) The holder of a mining claim may surrender the mining claim by lodging with the Minister—

(a) a notice of surrender in the approved form; and

(b) a properly completed royalty return, unless it has already been lodged under section 320(4); and

(ba) either—

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(i) the royalty payable to the State under section 320(3)(a), unless it has already been paid; or

(ii) evidence that the royalty has been paid to another person entitled to the royalty under section 320(3)(b); and

(c) the fee prescribed under a regulation.

(3) Upon a surrender of a mining claim, all adjustments between the holder and the Crown in respect of the payment of rental, fees and other moneys shall be at the discretion of the Minister.

(4) Where any moneys are specified pursuant to subsection (3) as a debt due to the Crown, the Minister may utilise the security deposited in accordance with section 83 for payment thereof.

(5) Nothing in this section shall prevent the Crown from recovering moneys from a person specified in subsection (3) as liable to pay and unpaid (whether directly or through utilisation of the security deposit) by action in the Land Court.

(6) In an action under subsection (5) for the recovery of a debt due to the Crown, the production to the Land Court of a certificate by the Minister certifying the amount of that debt shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the debt and the amount thereof.

(7) Where, at the time when the holder of a mining claim purports to surrender the mining claim, the holder duly makes application for a new mining claim or a mining lease in respect of the whole or part of the area of the current mining claim, the purported surrender shall not take effect unless and until the new mining claim or the mining lease is granted.

(8) Nothing in section 48 or 232 shall prevent the holder of a mining claim, at the time the holder surrenders the mining claim, from applying for the grant of a mining claim or mining lease over the whole or part of the area of the surrendered mining claim and the grant of the mining claim or mining lease applied for.

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(9) A surrender of a mining claim (other than a surrender referred to in subsection (7)) shall take effect on the day next following its acceptance by the Minister.

(10) However, the Minister may accept the surrender only if the Minister is satisfied—

(a) the holder has complied with the condition to carry out improvement restoration for the mining claim; and

(b) any relevant environmental authority has been cancelled or surrendered under the Environmental Protection Act.

(11) If the Minister is not satisfied the holder has complied with the condition, the Minister may, by written notice, give the holder reasonable directions about carrying out improvement restoration for the mining claim.

(12) The holder must comply with the directions.

Maximum penalty for subsection (12)—300 penalty units.

108 Abandonment of application for mining claim

(1) The applicant for the grant of a mining claim may, at any time before the grant of the mining claim, by notice in writing to the Minister abandon the application in respect of the whole of the land applied for in the application.

(2) The applicant for the grant of a mining claim who gives a notice referred to in subsection (1) to the Minister shall forthwith serve a copy of that notice on—

(a) if the application has been referred to the Land Court under section 72—the Land Court; and

(b) all other persons on whom the applicant was required under this Act to give a copy of the mining claim notice for the mining claim.

(3) The abandonment of an application for the grant of a mining claim shall take effect on the day next following its receipt by the Minister.

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109 Improvement restoration for mining claim

(1) This section applies on the termination of a mining claim, other than—

(a) by surrender under section 107; or

(b) for the granting of a new mining claim or mining lease over the area of the terminated mining claim.

(2) If the Minister is not satisfied the holder has satisfactorily complied with the condition to carry out improvement restoration for the mining claim, the Minister may, by written notice, give the holder reasonable directions about carrying out the restoration.

(3) The holder must comply with the directions.

Maximum penalty—300 penalty units.

(4) The holder and the holder's employees or agents may, to the extent reasonably necessary to comply with the directions—

(a) enter land stated in the notice; and

(b) bring on to the land vehicles, vessels, machinery and equipment that are approved by the Minister for the purpose.

110 Use of machinery in mining claim area

(1) The Governor in Council may, by regulation, declare with respect to a particular mining claim, all mining claims, all mining claim areas in a specified area of the State, all mining claims in respect of a specified mineral or all mining claims in respect of a specified mineral in a specified area of the State—

(a) the types of machinery, mechanical devices or other equipment (if any) that may or may not be used for prospecting, hand mining or other mining;

(b) the methods by which prospecting or operations for mining may or may not be carried on.

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(2) A person purporting to act under a mining claim to which a declaration under subsection (1) applies must comply with the declaration.

(3) The Crown shall not be civilly liable on account of the effect of any regulation made pursuant to this section or section 111.

111 Declaration of prohibited machinery in mining claim area

The Governor in Council may by regulation with respect to any part of the State, declare that certain types of machinery, mechanical devices or other equipment may not be used in, on or under the area of any mining claim within that part.

112 Minister may authorise use of prohibited machinery for purposes other than mining etc.

(1) Despite section 111, the Minister may authorise the use of prohibited machinery for purposes other than prospecting, exploring or mining in, on or under the area of a mining claim within an area specified in a declaration under that section.

(2) In subsection (1)—

prohibited machinery means machinery, mechanical devices and other equipment specified in the declaration under section 111.

113 Prohibited machinery etc. not to be used on mining claim land

A person shall not, without the written prior authority of the Minister given pursuant to section 112, have or use any machinery, mechanical device or other equipment the use of which has been prohibited by a declaration under section 111 in, on or under the area of a mining claim within an area specified in the declaration.

Maximum penalty—

(a) for a first offence—200 penalty units;

(b) for a second offence—400 penalty units;

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(c) for a third or subsequent offence—1,000 penalty units.

114 Minerals taken become property of holder of mining claim

All minerals lawfully mined under the authority of a mining claim cease to be the property of the Crown or person who had property therein and become the property of the holder of the mining claim subject however to the rights to royalty payments under this Act of the Crown or any other person.

115 Royalties in respect of minerals taken under mining claim

The holder of a mining claim shall pay in respect of all minerals mined or purported to be mined under the authority of the mining claim, the royalty prescribed pursuant to chapter 11.

116 Appeals about mining claims

(1) An applicant for a mining claim who is dissatisfied with a decision of the Minister to refuse to grant the mining claim (the ***aggrieved person***) may appeal against the decision to the Land Court.

(2) A holder of a mining claim who is dissatisfied with any of the following decisions of the Minister (also an ***aggrieved person***) may appeal against the decision to the Land Court—

(a) a decision to impose a condition on a mining claim;

(b) a decision to require an applicant for, or holder of, a mining claim to deposit security;

Note—

For the provision of security, see section 83.

(c) a decision about carrying out improvement restoration for the mining claim;

(d) a decision to refuse to renew a mining claim.

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(3) However, an applicant may not appeal against a decision of the Minister made in accordance with a consent of the Governor in Council or decision of the Land Court.

117 How to start an appeal

(1) An appeal is started by filing a written notice of appeal with the chief executive.

(2) The notice of appeal must be filed within 20 business days after the aggrieved person receives notice of the decision appealed against.

(3) However, if—

(a) the decision did not state the reasons for the decision; and

(b) the person asked for a statement of reasons for the decision within the period mentioned in subsection (2);

the person may make the application within 20 business days after the person is given the statement of reasons.

(4) In addition, the Land Court may extend the period for filing the notice of appeal.

(5) The notice of appeal must state the grounds of appeal.

118 Stay of operation of decisions

(1) The Land Court may stay a decision appealed against to secure the effectiveness of the appeal.

(2) A stay—

(a) may be given on conditions the Land Court considers appropriate; and

(b) operates for the period fixed by the Land Court; and

(c) may be revoked or amended by the Land Court.

(3) The period of a stay fixed by the Land Court must not extend past the time when the Land Court decides the appeal.

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(4) A decision, or the carrying out of a decision, is affected by the starting of an appeal only if the decision is stayed.

119 Hearing procedures

(1) In deciding an appeal, the Land Court—

(a) is not bound by the rules of evidence; and

(b) must observe natural justice.

(2) An appeal is by way of rehearing.

120 Powers of Land Court on appeal

(1) In deciding an appeal, the Land Court may—

(a) confirm the decision appealed against; or

(b) set the decision aside and substitute another decision; or

(c) set aside the decision and return the issue to the Minister with directions the Land Court considers appropriate.

(2) In substituting another decision, the Land Court has the same powers as the Minister.

Example—

The Land Court may decide that an unsuccessful applicant for a mining claim be granted the claim and impose conditions on it.

(3) If the Land Court substitutes another decision, the substituted decision is, for this Act, taken to be the decision of the Minister.

121 Effect of termination of mining claim

(1) This section applies on the termination of a mining claim.

(2) However, this section (other than subsection (3)) does not apply to a mining claim if the termination is for granting a new mining claim or a mining lease over the same area to the holder of the terminated mining claim.

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(3) The person who was the holder of the terminated mining claim immediately before its termination must immediately remove each post or other thing used to mark the area (other than a survey mark or anything else required under another Act not to be removed).

(4) On the termination of a mining claim, the ownership of all mineral and property on the land in the area of the terminated claim divests from the owner and vests in the State.

(5) However, subsection (4) applies to property only if it was brought on to the area under the terminated claim.

122 Application may be made for approval to remove mineral and property

(1) This section applies to mineral and property that vests in the State on the termination of a mining claim.

(2) Anyone who had an interest in the mineral or property immediately before its ownership vests in the State may apply in writing to the chief executive for permission to remove the mineral or property from the land.

(3) The application—

(a) must be made within 20 business days after the mineral or property vests in the State (or a longer period, of not more than 3 months, allowed by the chief executive); and

(b) may be made even though a subsequent grant of a mining claim, exploration permit, mineral development licence or mining lease has been made over the land.

(4) The chief executive may approve or refuse to approve the application.

(5) However, the chief executive must approve the application if the chief executive is satisfied—

(a) the person was entitled to the mineral or property immediately before it vested in the State; and

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(b) there is enough security held for the mining claim to meet the costs for which it was deposited.

Note—

For the provision of security, see section 83.

(6) The approval may be given on conditions stated in it.

(7) If the application is approved, the person named in the approval may enter the land and remove mineral or property (other than covers, fencing, casings, linings, timbering or other things securing the safety of the land) stated in the application before the time stated in the approval ends.

(8) Anything removed under subsection (7) divests from the State and vests in the person entitled to it immediately before the termination of the mining claim.

(9) However, mineral divests from the State and forms part of the land if it is not removed before the later of—

(a) the end of the time stated in an approval under this section; or

(b) 3 months after the termination of the mining claim.

123 Property remaining on former mining claim may be sold etc.

(1) This section applies if the chief executive has not received, or has received but not granted, an application for approval to remove property from the area of a terminated mining claim within 3 months after the claim's termination.

(2) The chief executive may—

(a) sell the property by public auction or in another way; or

(b) if the property has no commercial value—dispose of or destroy it.

(3) Proceeds of a sale are to be applied in the following order towards—

(a) the reasonable expenses incurred in the sale;

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(b) the cost of rectifying actual damage for which an amount of security deposited for the mining claim could have been used but was not used, or was inadequate;

(c) costs and expenses mentioned in the Environmental Protection Act, section 316C;

(d) amounts owing to the State under this Act by the former holder;

(e) any other amounts owing to the State under the Environmental Protection Act for a relevant environmental authority;

(f) rates and charges (including interest on unpaid rates and charges) owing to a local government by the former holder for the mining claim;

(g) amounts owing to a mortgagee by the former holder under a mortgage registered under this Act over the mining claim.

(4) Any balance must be paid to the former holder.

(5) If the chief executive can not decide the identity of, or locate, a person entitled to the proceeds or a part of the proceeds, the chief executive may pay the amount to the public trustee as unclaimed moneys.

(6) Compensation is not payable for a sale, disposal or destruction under this section.

124 Approval for prospecting or exploring on reserve subject of mining claim application

(1) The holder of a prospecting permit or exploration permit who makes application for the grant of a mining claim in respect of land that is a reserve and who is unable to obtain the consent of the owner to prospect or explore on that land for the purposes of obtaining information necessary to further the application may apply to the chief executive for permission to so prospect or explore upon that land.

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(2) The chief executive may reject the application or may recommend to the Minister that, subject to the views of the owner being obtained and taken into account, permission be given to the holder to prospect or explore accordingly.

(3) Where the Minister gives the holder of a prospecting permit or exploration permit permission pursuant to subsection (2), the holder, for as long as the holder complies with any conditions imposed by the Minister, shall be deemed to have the consent of the owner of the relevant land to be on that land for prospecting or exploring purposes until the application for the grant of the mining claim is determined or the Minister otherwise determines.

125 Variation of access to mining claim area

(1) The holder of a mining claim may apply to the chief executive in the approved form for a variation of the land used or proposed to be used as access in relation to the area of the mining claim.

(2) An application for a variation of the land used or proposed to be used as access under this section shall be accompanied by—

(a) such particulars as are, by section 61, required to accompany an application for the grant of a mining claim in so far as those particulars relate to the land used or proposed to be used as access in relation to the area of the mining claim; and

(b) the prescribed application fee.

(3) Where, in respect of an application for a variation of the land used or proposed to be used as access under this section, the chief executive is not satisfied that the owner of the land proposed to be used as access consents to the use, the chief executive must refer the issue of consent to the Land Court for its consideration.

(4) The Land Court must fix a date for the hearing and immediately give written notice of the date to each of the following—

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(a) the chief executive;

(b) the applicant;

(c) the land owner.

(4A) The date must be at least 20 business days after the day the Land Court fixes the date.

(5) The Land Court shall hear and determine the matter by determining—

(a) that consent to the proposed variation should or should not be given; and

(b) if consent should be given, the amount (if any) of compensation payable by the holder in respect of the proposed use of that land as access.

(6) Subject to subsection (7), the provisions of section 85(5) to (9) apply in respect of a matter referred to the Land Court under this section as if the matter were an application made to the Land Court under section 85(4).

(7) In determining compensation payable under subsection (5), allowance shall be made for compensation agreed or determined to be payable in respect of the current land used as access in respect of the mining claim.

(8) The determination of the Land Court of a matter under this section shall be final and conclusive.

(9) In respect of an application made under this section, upon—

(a) where the proposed access is over land of which there is an owner—

(i) lodgement with the chief executive of the consent in writing of the owner or owners of that land; or

(ii) where the Land Court determines that consent should be granted, whether with or without compensation, compliance with any terms and conditions imposed by the Land Court to be complied with before consent is given; and

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(b) where the proposed access is over land of which there is no owner, the chief executive determining that the variation is, in the circumstances, appropriate;

the chief executive shall record the variation of that access in the register and advise the holder and the owner accordingly.

(10) An agreement made between a holder and an owner of land regarding compensation payable in respect of the proposed use of the land as access in respect of a mining claim as a result of a variation under this section shall not be effective unless and until—

(a) it is in writing signed by or on behalf of the parties; and

(b) it is filed.

Chapter 4 Exploration permits

Part 1 Preliminary

126 Blocks and sub-blocks of land

(1) For the purposes of this Act the surface of the earth shall be deemed to be divided into blocks and sub-blocks.

(2) A block shall be the land contained within 2 meridians 5' of longitude apart each meridian being a multiple of 5' of longitude from the meridian of Greenwich and within 2 parallels of latitude 5' apart each parallel of latitude being a multiple of 5' of latitude from the equator.

(3) A block shall be divided into 25 sub-blocks each sub-block being bounded by 2 meridians 1' of longitude apart and 2 parallels of latitude and 1' of latitude apart.

(4) Each block and sub-block shall be identified by a means approved for the time being by the chief executive.

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127 Land subject to exploration permit

(1) An exploration permit authorises entry to sub-blocks of land specified therein.

(2) Subject to subsection (3), an exploration permit shall be granted in respect of specified sub-blocks of land each sub-block to have at least 1 side in common with another sub-block within the subject land.

(3) If the Minister, on the information contained in the application for an exploration permit, is satisfied that the program of work proposed in the application can be carried out using competent and efficient mineral exploration practices, an exploration permit may be granted for sub-blocks of land that do not have a common boundary.

(4) Unless otherwise approved by the Minister either generally or in a particular case, the area of land in respect of which an exploration permit may be granted shall not exceed the area prescribed in respect of the mineral or minerals concerned.

128 Only eligible persons to hold exploration permits

An exploration permit shall not be held by a person who is not an eligible person.

129 Entitlements under exploration permit

(1) During the term of an exploration permit—

(a) the holder of the exploration permit and any person who acts for the purpose of carrying out any activity authorised by the exploration permit, with or by such vehicles, vessels, machinery and equipment as may be necessary or expedient for the purpose of exploring for any mineral to which the exploration permit applies, may, in compliance with the Common Provisions Act, chapter 3, enter any part of the area of the exploration permit for the purpose of—

(i) facilitating that exploration; or

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(ii) plugging and abandoning, or otherwise remediating, a legacy borehole and rehabilitating the surrounding area in compliance with the requirements prescribed under a regulation; and

(b) the holder of the permit may, subject to compliance with this Act, have considered for grant, in priority to all other persons, an application for the grant of a mining claim, mineral development licence or mining lease for all or part of the area of the permit; and

(c) the holder of the permit may enter the area of the permit for either or both of the following purposes—

(i) doing all acts necessary to comply with this Act for an application mentioned in paragraph (b);

(ii) if the application or EIS relates to an application mentioned in paragraph (b), doing all acts necessary to comply with—

(A) an application for an environmental authority under the Environmental Protection Act; or

(B) that Act for an EIS; or

(C) the *State Development and Public Works Organisation Act 1971* for an EIS.

Example for paragraph (c)(ii)—

The holder of the permit wishes to apply for the grant of a mining lease for the area of the permit. The holder also wishes to apply for an environmental authority for a mining activity that relates to the mining lease under the Environmental Protection Act. The holder may enter the area to carry out an environmental assessment for the environmental authority application under the Environmental Protection Act, section 125(1)(l).

(7) The holder of an exploration permit, and each person who enters or is upon land under the authority of that exploration permit, shall comply with the terms and conditions upon which any consent required to be given under this Act in respect thereof was given by the owner of that land.

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(15) For the purpose of exercising his or her entitlements under this part a person who enters or is upon land under the authority of an exploration permit may stay at night thereon and for that purpose may set up temporary accommodation thereon.

(16) During the term of an exploration permit, the rights of the holder of the permit relate, and are taken to have always related, to the whole of the area of the permit.

130 Exploration permit to specify minerals sought

(1) Except where subsection (2) is applied, an exploration permit shall be granted in respect of—

(a) all minerals other than coal; or

(b) coal.

(2) If, in the exceptional circumstances of a particular case, the Minister considers good reason exists therefor, an exploration permit may be granted in respect of the mineral or minerals specified therein.

(3) Minerals may be specified by indicating other minerals to which the exploration permit does not apply.

Part 2 Obtaining exploration permit for a mineral other than coal

130A Application of pt 2

This part applies to exploration permits for a mineral other than coal.

131 Who may apply

(1) An eligible person may apply for an exploration permit (the ***proposed permit***) other than for a sub-block—

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(a) over which a current exploration permit authorises exploration for a mineral for which the proposed permit is sought; or

(b) that has been the subject of an exploration permit (the ***earlier permit***) authorising the exploration for a mineral for which the proposed permit is sought and less than 2 months has passed since the end of the month in which the sub-block ceased to be in—

(i) the earlier permit's area; or

(ii) if the earlier permit has ended—the former earlier permit's area; or

(c) that is or has been the subject of an earlier exploration permit application if the earlier application was for a mineral for which the proposed permit is sought and—

(i) the earlier application has not been decided; or

(ii) if the earlier application has been refused or abandoned—less than 2 months has passed since the end of the month in which the earlier application was refused or abandoned.

(2) However, an application can not be made for an exploration permit for a sub-block the subject of a call for EP (non-coal) tenders.

Note—

See section 136A in relation to calls for EP (non-coal) tenders.

(3) Despite subsection (1)(a), an eligible person may apply for a proposed permit for a sub-block (the ***relevant sub-block***) in the area of a current exploration permit if—

(a) the person is the holder of the current exploration permit; and

(b) the person purports to surrender the current exploration permit under section 161(1) and the application for the proposed permit relates to land including the relevant sub-block.

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(4) Despite subsection (1)(b), an eligible person may apply for a proposed permit for a sub-block over which the person held an exploration permit the person had surrendered to be granted a further exploration permit for the sub-block.

132 Exclusion of land from area of exploration permit if subject to other authority under Act

(1) Where, at the time the lodgement of an application for the grant of an exploration permit is accepted, land is the subject of—

(a) a mining claim, mineral development licence or mining lease; or

(b) an application for a mining claim, mineral development licence or mining lease;

that land and the surface of that land shall be taken to be excluded from the land specified in the exploration permit—

(c) in the case of a mining claim, mineral development licence or mining lease referred to in paragraph (a)—for so long as the land remains subject thereto; and

(d) in the case of an application referred to in paragraph (b)—

(i) for so long as the application is not rejected or abandoned; and

(ii) if a mining claim, mineral development licence or mining lease is granted, for so long as the land remains subject thereto;

except where the Minister, in exceptional circumstances in the Minister's absolute discretion otherwise determines.

(2) Upon—

(a) the termination of a mining claim or mining lease granted; or

(b) the rejection or abandonment of an application for—

(i) a mining claim; or

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(ii) a mineral development licence; or

(iii) a mining lease;

in respect of land within the external boundaries of the area of an exploration permit that land shall become part of the area of the exploration permit except—

(c) to the extent that the land is the subject of a current mining claim, mineral development licence or mining lease or application for a mining claim, mineral development licence or mining lease; or

(d) in the case of a rejection or abandonment of an application for a mineral development licence where the applicant is not the holder of the exploration permit; or

(e) where the exploration permit provides otherwise.

133 Application for exploration permit

An application for an exploration permit may be made by an eligible person and shall—

(a) be in the approved form; and

(b) specify the name of each applicant; and

(c) specify the name and address for service of 1 person upon whom any notice may be served on behalf of the applicant or the applicants; and

(d) define the boundary of the area of the proposed exploration permit; and

Note—

Section 386R sets out the requirements for defining the boundary of the area of a proposed mining tenement.

(e) specify the mineral or minerals in respect of which the exploration permit is sought; and

(f) be accompanied by a statement—

(i) specifying a description of the program of work proposed to be carried out under the authority of the exploration permit, if granted; and

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(ii) specifying the estimated human, technical and financial resources proposed to be committed to exploration work during each year of the exploration permit, if granted; and

(iii) detailing exploration data captured by the applicant prior to the application in relation to that land; and

(g) be accompanied by—

(i) a statement, separate from the statement mentioned in paragraph (f), detailing the applicant's financial and technical resources; and

(ii) if the application relates to land that includes sub-blocks of land that do not have a common boundary—a statement detailing how the work proposed can be carried out using competent and efficient mineral exploration practices; and

(iii) if the application relates to an area of land that exceeds the area prescribed for the mineral or minerals—a statement about why the applicant requires more than the prescribed area of land; and

(iv) proof of the applicant's identity; and

(v) the application fee prescribed under a regulation.

134 Application to be numbered

An application for an exploration permit shall be numbered as prescribed which number, if the exploration permit is granted, shall become the number of that permit.

134A Priority of applications for grant of exploration permit

(1) Applications for the grant of exploration permits in respect of the same mineral, duly made in respect of or including the same land take priority, for the purpose of considering and deciding the applications, according to the day on which they are lodged under this Act.

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(2) If applications are lodged on the same day, they take the priority the Minister decides, after considering the relative merits of each application.

(3) If an application is lodged by mail, courier service or similar means, it is taken to be lodged on the day the application is received at a place that the application may be lodged under section 386O.

135 Abandonment of application for exploration permit

(1) The applicant for an exploration permit may, at any time before the grant of the exploration permit, by notice in writing to the chief executive abandon the application in relation to all or part of the land to which it relates.

(2) The abandonment of an application for the grant of an exploration permit shall take effect on the day next following its receipt by the chief executive.

(3) If the application is abandoned in relation to part only of the land to which it relates, the application must be amended to define the boundary of the area of the proposed exploration permit for which the application is to remain in force.

Note—

Section 386R sets out the requirements for defining the boundary of the area of a proposed mining tenement.

136 Grant of exploration permit on application

(1) The Minister may, for an application for an exploration permit under this part—

(a) grant an exploration permit, with or without conditions; or

(b) refuse the application.

(2) However, the Minister must not grant an exploration permit unless the Minister is satisfied the prescribed criteria for the grant of the permit are met.

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(3) Also, subject to subsection (4), the Minister must not grant an exploration permit for land if all or any part of the land is—

(a) in a fossicking area; or

(b) subject to an exploration permit for the same mineral.

(4) Subsection (3)(a) does not apply if the application for the exploration permit was made, but not decided, before the land became a fossicking area.

136A Obtaining exploration permit by competitive tender

(1) This section applies if the Minister considers it is in the best interests of the State for an exploration permit for a mineral other than coal to be granted for 1 or more sub-blocks by competitive tender.

(2) The Minister may publish a gazette notice (a ***call for EP (non-coal) tenders***) inviting tenders for the exploration permit.

(3) Part 3, divisions 2 and 3 apply for the call for EP (non-coal) tenders—

(a) as if—

(i) a reference to a call for EP (coal) tenders were a reference to a call for EP (non-coal) tenders; and

(ii) a reference to an exploration permit for coal were a reference to an exploration permit for a mineral other than coal for the sub-blocks the subject of the call; and

(b) with any other necessary changes.

(4) The Minister must not act under subsection (2) for a sub-block that is—

(a) in a fossicking area; or

(b) the subject of an application for an exploration permit for the same mineral.

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Part 3 Obtaining exploration permit for coal

Division 1 Preliminary

136B Application and operation of pt 3

(1) This part—

(a) applies to exploration permits for coal; and

(b) provides for a process for the granting of exploration permits for coal—

(i) generally, by competitive tender; or

(ii) to a person who holds 1 or more exploration permits for coal for the same land that are surrendered immediately before the grant of the permit; or

(iii) to a person in relation to a coal mining project under division 5.

(2) To remove any doubt, it is declared that an exploration permit for coal can only be granted under this part.

Division 2 Competitive tenders

136C Call for tenders

(1) The Minister may publish a gazette notice (a ***call for EP (coal) tenders***) inviting tenders for an exploration permit for coal.

(2) The call must state—

(a) the proposed area of the permit; and

(b) the day and time by which tenders in response to it must be made (the ***closing time*** for the call); and

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(c) that the tenders must be lodged before the closing time for the call; and

(d) that details about each of the following are available at a stated place—

(i) any proposed conditions of the permit that are likely to impact significantly on exploration in the proposed area;

(ii) the period of not more than 5 years for which the proposed program of work for the permit must apply;

(iii) any criteria (***special criteria***), other than the prescribed criteria, proposed to be used to decide whether to grant the permit, or to decide its provisions;

(iv) whether a process for appointing a preferred tenderer involving a cash bid component is to be used for deciding the call.

(3) The call may state other relevant matters, including, for example, matters relevant to the special criteria and prescribed criteria.

(4) Subsection (2)(d)(i) does not limit the Minister's power under section 136K to decide conditions of the exploration permit if it is granted.

(5) However, the Minister must not act under this section for land if all or any part of the land is—

(a) in a fossicking area; or

(b) the subject of an application for an exploration permit for the same mineral.

136D Right to tender

(1) An eligible person may, by a tender made under section 136E, tender for a proposed exploration permit the subject of a call for EP (coal) tenders.

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(2) However, the tender can not be made—

(a) after the closing time for the call; or

(b) for only part of the area of the proposed exploration permit.

136E Requirements for making tender

A tender for an exploration permit for coal must—

(a) be in the approved form; and

(b) be accompanied by a statement—

(i) specifying a description of the program of work proposed to be carried out under the authority of the exploration permit, if granted; and

(ii) specifying the estimated human, technical and financial resources proposed to be committed to exploration work during each year of the exploration permit, if granted; and

(c) be accompanied by a statement, separate from the statement mentioned in paragraph (b), detailing the tenderer's financial and technical resources; and

(d) be accompanied by the following—

(i) proof of the tenderer's identity;

(ii) the application fee prescribed under a regulation;

(iii) if a process for appointing a preferred tenderer involving a cash bid component is to be used for deciding the call—the tenderer's cash bid.

136F Right to terminate call for tenders

(1) The Minister may, by gazette notice, terminate a call for EP (coal) tenders at any time before deciding to grant an exploration permit to an eligible person who has made a tender in response to the call.

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(2) All tenders in response to the call lapse when the call is terminated.

(3) No amount, whether by way of compensation, reimbursement or otherwise is payable by the State to any person for or in connection with the termination.

(4) However, subject to sections 136H(4) and 136J(4), the Minister must refund any tender security given by the tenderer.

136G Amendment of tender

(1) This section provides for the amendments that can be made to a tender in response to a call for EP (coal) tenders.

(2) A proposed program of work included in the tender may be amended at any time until, but not after, the tenderer has become the preferred tenderer for the call.

(3) The tender may be amended, other than as provided by subsection (2), at any time until, but not after, the closing time for the call.

(4) However, subsection (3) does not apply if—

(a) the tenderer is a company; and

(b) the change is only a change of name of the tenderer; and

(c) the tenderer's Australian company number and Australian registered business name have not changed.

136H Withdrawal of tender

(1) A person who has lodged a tender in response to a call for EP (coal) tenders may lodge a notice withdrawing the tender at any time before the relevant exploration permit is granted.

(2) The withdrawal takes effect when the notice is lodged.

(3) If the preferred tenderer's tender is withdrawn under this section, the withdrawal does not affect the Minister's power to appoint another tenderer, from the tenders made in response to the call, to be the preferred tenderer.

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(4) If a tender is withdrawn under this section, the Minister may, if the Minister considers it reasonable in the circumstances, retain the whole or part of any tender security given by the tenderer.

Division 3 Deciding tenders

136I Process for deciding tenders

(1) Subject to section 136K(2) and (3), any process the Minister considers appropriate may be used to decide a call for EP (coal) tenders, including, for example—

(a) a process appointing a preferred tenderer on the tenders made in response to the call (whether or not involving a cash bid component); or

(b) a process involving short-listing a group of possible preferred tenderers and inviting them to engage in another round of tendering before appointing a preferred tenderer from that group.

(2) Without limiting subsection (1), the Minister may give a tenderer a notice requiring the tenderer to give the Minister, within the reasonable period stated in the notice, information the Minister reasonably requires to assess the tender.

136J Provisions for preferred tenderers

(1) The Minister may require a preferred tenderer for the call for EP (coal) tenders to—

(a) pay any amounts necessarily incurred, or to be incurred, to enable the exploration permit to be granted; and

Example—

amounts required to comply with the Commonwealth Native Title Act, part 2, division 3, subdivision P

(b) do all or any of the following within a stated reasonable period—

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(i) pay the rental for the first year of the term of the permit under section 138;

(ii) give, under section 144, security for the permit.

(2) If a preferred tenderer does not—

(a) comply with a requirement under subsection (1); or

(b) do all things reasonably necessary to allow an exploration permit for coal to be granted to the tenderer;

the Minister may revoke the tenderer's appointment as the preferred tenderer.

(3) However, before acting under subsection (2), the Minister must give the preferred tenderer a reasonable opportunity to provide reasons for, and rectify, the tenderer's failure to comply with a requirement under subsection (1) or (2)(b).

(4) If the Minister revokes the appointment of the tenderer as the preferred tenderer under this section, the Minister may—

(a) retain the whole or part of any tender security given by the tenderer, if the Minister considers it reasonable in the circumstances; and

(b) appoint another tenderer to be the preferred tenderer.

136K Deciding whether to grant exploration permit

(1) The Minister may, after the closing time for the call for EP (coal) tenders—

(a) grant an exploration permit for coal to 1 tenderer, with or without conditions; or

(b) refuse to grant any exploration permit for coal.

(2) However, the Minister must not grant the exploration permit unless the Minister is satisfied the prescribed criteria for the grant of the permit are met.

(3) Also, in deciding whether to grant an exploration permit or deciding its provisions, the Minister must consider any special criteria for the call.

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136L Notice to unsuccessful tenderers

(1) After a call for EP (coal) tenders has been decided, each tenderer not granted the exploration permit must be given notice of the decision.

Note—

See also the *Judicial Review Act 1991*, section 32 (Request for statement of reasons).

(2) Subject to sections 136H(4) and 136J(4), the Minister must refund any tender security given by the tenderer.

Division 4 Obtaining exploration permit following surrender

136M Application for exploration permit for surrendered exploration permits

(1) This section applies if the holder of an exploration permit for coal intends to surrender the permit.

(2) The holder may apply for a new exploration permit for the whole or part of the area of the exploration permit to be surrendered.

(3) The application must be made in the same way an application for an exploration permit is made under section 133.

(4) The Minister may give the applicant a notice requiring the applicant to give the Minister information the Minister reasonably requires to assess the application.

(5) If the information is not given to the Minister within the reasonable period stated in the notice, the Minister may refuse the application.

(6) An application for an exploration permit under this section must be numbered in the way prescribed under a regulation and the number, if the permit is granted, must become the number of that permit.

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136N Grant of exploration permit for surrendered exploration permits

(1) The Minister may, for an application for an exploration permit under section 136M—

(a) grant the exploration permit, with or without conditions; or

(b) refuse the application.

(2) However, the Minister must not grant an exploration permit under this section unless the Minister is satisfied the prescribed criteria for the grant of the permit are met.

(3) Also, subject to subsection (4), the Minister must not grant an exploration permit for land if all or any part of the land is in a fossicking area.

(4) Subsection (3) does not apply if the application for the exploration permit was made, but not decided, before the land became a fossicking area.

Division 5 Obtaining exploration permit for coal other than by competitive tender

136O Definitions for division

In this division—

coal interest means—

(a) a coal exploration tenement; or

(b) a coal mining lease; or

(c) an application for a coal mining lease.

coal mining project see section 136P(1).

project land, for a coal mining project, see section 136P(2).

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136P Meaning of *coal mining project* and *project land*

(1) A ***coal mining project*** is 1 or more coal interests that is or includes a coal mining lease, or an application for a coal mining lease, if authorised activities for the coal interest or interests are or will be carried out as a single integrated operation.

(2) ***Project land*** for a coal mining project is land in the area of any of the following for the project—

(a) a coal exploration tenement;

(b) a coal mining lease;

(c) a proposed coal mining lease the subject of an application for a coal mining lease.

136Q Who may apply

An eligible person may apply under this division for an exploration permit for coal for an area if—

(a) the eligible person is the holder of, or the applicant for, a coal mining lease that is, or is included in, a coal mining project; and

(b) the area—

(i) is contiguous to project land for the coal mining project; and

(ii) is not the subject of a coal interest or an application for a coal exploration tenement; and

(iii) is not more than 6 sub-blocks; and

(iv) is not the subject of a call for EP (coal) tenders; and

(c) an exploration permit for coal has not previously been granted under this division in relation to the coal mining project.

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136R Application

An application under this division for an exploration permit for coal in relation to a coal mining project must—

(a) be in the approved form and lodged with the chief executive; and

(b) state the name of the applicant; and

(c) define the boundary of the area of the proposed exploration permit; and

Note—

Section 386R sets out the requirements for defining the boundary of the area of a proposed mining tenement.

(d) be accompanied by a statement—

(i) describing the program of work proposed to be carried out under the authority of the exploration permit; and

(ii) stating the estimated human, technical and financial resources proposed to be committed to the work during each year of the exploration permit; and

(iii) stating how the work proposed to be carried out under the authority of the exploration permit is necessary for the operation of the coal mining project; and

(e) be accompanied by a statement, separate from the statement mentioned in paragraph (d), detailing the applicant's financial and technical resources; and

(f) be accompanied by—

(i) proof of the applicant's identity; and

(ii) the application fee prescribed by regulation.

136S Deciding application

(1) The Minister may—

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(a) grant the exploration permit for coal, with or without conditions, for all or part of the area of the proposed exploration permit; or

(b) refuse the application.

(2) However, the Minister must not grant the exploration permit unless the Minister is satisfied the prescribed criteria for the grant of the permit are met.

(3) Also, the Minister must not grant the exploration permit if all or part of the area of the proposed exploration permit is in a fossicking area.

(4) Subsection (3) does not apply if the application for the exploration permit was made but not decided before the area became a fossicking area.

(5) Without limiting subsection (1), the Minister may refuse to grant the exploration permit if the Minister considers the grant is not in the public interest.

(6) The Minister may grant the exploration permit for coal only if the Minister is satisfied—

(a) the applicant is the holder of, or the applicant for, a coal mining lease that is, or is included in, a coal mining project; and

(b) the area of the exploration permit is contiguous to the project land for the coal mining project; and

(c) the area of the exploration permit is not the subject of a coal interest or an application for a coal exploration tenement; and

(d) the area of the exploration permit is not more than 6 sub-blocks; and

(e) an exploration permit for coal has not previously been granted under this division in relation to the coal mining project; and

(f) the exploration permit is necessary for the operation of the coal mining project; and

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(g) the applicant has demonstrated the financial and technical capability of carrying out the activities proposed under the exploration permit; and

(h) the area of the exploration permit is not identified, or likely to be identified, as land to be released for tender for coal or other minerals.

(7) If the exploration permit is granted for only part of the area of the proposed exploration permit—

(a) the application is taken to be refused for the remainder of the area; and

(b) the Minister must give the applicant written notice of the reasons for the refusal.

(8) If the Minister refuses the application, the Minister must give the applicant written notice of the reasons for the refusal.

136T Withdrawing application

(1) The applicant for an exploration permit may lodge a notice with the chief executive withdrawing the application in relation to all or part of the area to which it relates at any time before the grant of the exploration permit.

(2) The withdrawal takes effect when the notice is lodged.

(3) If an application for an exploration permit is withdrawn in relation to only part of the area to which it relates, the application must be amended to define the boundary of the area of the proposed exploration permit for which the application is to remain in force.

Note—

Section 386R sets out the requirements for defining the boundary of the area of a proposed mining tenement.

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Part 4 Other provisions about exploration permits

137 Prescribed criteria for grant of exploration permit

(1) This section states the criteria (***prescribed criteria***) for the grant of an exploration permit under part 2 or 3.

(2) The criteria are as follows—

(a) the requirements of this Act have been complied with;

(b) the applicant is an eligible person;

(c) the applicant has paid rental for the first year of the term of the exploration permit under section 138;

(d) the Minister has, under subsection (3), approved the program of work that accompanied the application for the exploration permit;

(e) the Minister has not, under subsection (4), decided the person is disqualified from being granted the permit.

Notes—

1 Under section 144, an exploration permit can not be granted until the applicant has deposited security decided under that section.

2 If the application relates to acquired land, see also section 10AAC.

(3) In deciding whether to approve the program of work, the Minister must have regard to the following matters—

(a) the extent of the proposed activities in the proposed area of the exploration permit;

(b) when and where the applicant proposes to carry out exploration activities in the proposed area of the exploration permit;

(c) whether the applicant has the financial and technical capability for carrying out the work.

(4) The Minister may decide an applicant is disqualified from being granted an exploration permit if—

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(a) the Minister reasonably believes the applicant or, if the applicant is a company, an associate of the applicant has, at any time, contravened a provision of this Act, the repealed Acts or other mining legislation (whether or not the applicant or associate has been charged or convicted of an offence for the contravention); and

(b) having regard to the matters mentioned in subsection (5), the Minister considers the applicant is not a suitable person to carry out activities under the exploration permit.

(5) For subsection (4)(b), the matters to which the Minister may have regard are as follows—

(a) the nature of the contravention, including, for example—

(i) whether it relates to an administrative or procedural requirement; and

(ii) the extent to which the applicant or applicant's associate was involved in the contravention; and

(iii) whether the contravention involved the applicant or associate engaging in fraudulent or dishonest conduct; and

(iv) the degree of harm caused or likely to be caused by the contravention to persons other than the applicant or to the environment;

(b) whether the applicant or applicant's associate has been proceeded against for the contravention and, if so, the outcome of the proceeding;

(c) whether the applicant or an associate of the applicant has previously engaged in similar contraventions or other contraventions of a kind mentioned in subsection (4)(a), and the nature of the contraventions and the outcome of any proceedings for the contraventions;

(d) any other matters the Minister considers relevant.

(6) In this section—

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associate, for an applicant that is a company, means—

(a) an officer or employee of the company; or

(b) another person who in the Minister's opinion is in a position to control or influence substantially the company's affairs.

137A Details of exploration permit to be recorded in register

The chief executive must record in the register the following details of an exploration permit—

(a) the identification number of the permit;

(b) the name of the holder;

(c) the address for service of notices on the holder;

(d) the description of land for which the permit is granted;

(e) the term and date of commencement of the permit;

(f) the conditions, other than conditions prescribed under this Act, to which the permit is subject;

(g) the minerals the subject of the permit;

(h) the programs of works and studies to be carried out under the permit.

138 Rental payable on exploration permit

(1) Rental for the first year of the term of an exploration permit (its ***first rental period***) is payable before the granting of the permit under part 2 or 3 (the ***original permit***).

(2) On the renewal of an exploration permit, rental is payable—

(a) for the first year of the term of the renewed permit; and

(b) within 20 business days after the renewal is granted.

(3) For each year an exploration permit is in force, rental for the whole year (other than its first rental period) is payable on or before the anniversary of—

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(a) for an original permit—the grant of the permit; or

(b) for a renewed permit—the day the term of the renewed permit started.

Note—

For when the term of a renewed permit starts, see section 147D.

(4) The amount of the rental payable for each year is calculated by multiplying the number of sub-blocks to which the permit applies by the amount prescribed under a regulation for the year.

139 Periodic reduction in area of exploration permit

(1) Unless the Minister otherwise decides, whether before the grant of an exploration permit or during its term the area of the permit must be reduced—

(a) by 40% by the end of the first 3 years after the permit is granted; and

(b) by a further 50% of the remaining area of the permit by the end of the first 5 years after the permit is granted; and

(c) each time the permit is renewed—

(i) by a further 40% of the remaining area of the permit by the end of the first 3 years after the day the renewed permit started; and

(ii) by a further 50% of the remaining area of the permit by the end of the first 5 years after the day the renewed permit started.

Note—

See section 147D.

(2) The area remaining after the reduction must consist of whole sub-blocks.

Note—

See, however, section 10AAB(3) if land in the exploration permit is taken under a resumption law.

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(3) If the Minister so directs on reasonable grounds, the reduction of the area of a particular exploration permit may be more or less than that prescribed by subsection (1).

(4) At least 20 business days (or such shorter period as the Minister in the particular case allows) prior to the date when, pursuant to subsection (1), the area of an exploration permit is to be reduced, the holder of the permit shall make a submission to the chief executive identifying the sub-blocks of land to which the holder desires the exploration permit to apply after that reduction.

Note—

For other relevant provisions about making a submission, see section 386O.

(5) If a submission made in accordance with subsection (4) proposes a reduction of the area of the exploration permit and the reduction complies with subsection (1), then on and from the date when the area is to be reduced, the exploration permit shall apply only in respect of the land specified in the submission.

(6) If a submission that is made for the purposes of subsection (4) is not made in accordance with subsection (4) or does not comply with subsection (1), then the Minister may determine as the Minister considers reasonable that an exploration permit shall apply on and from the date of the Minister's determination or the date when pursuant to subsection (1) the reduction should take effect, whichever is the later in respect of land specified in the Minister's determination, and on and from that date the exploration permit shall apply only in respect of that land.

(7) If the holder of an exploration permit fails to make a submission in accordance with subsection (4) the Minister may proceed as provided in subsection (6) or may cancel the exploration permit.

(8) Compensation is not payable for a reduction in the area of an exploration permit under this section.

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140 Voluntary reduction in area of exploration permit

(1) In addition to the requirement under section 139 to reduce the area of an exploration permit, the holder of the permit may, at any time during its term, make a submission to the chief executive—

(a) voluntarily reducing the area of the permit; and

(b) identifying the sub-blocks of land to which the holder no longer wants the permit to apply.

(2) The area remaining after the reduction must consist of whole sub-blocks.

Note—

See, however, section 10AAB(3) if land in the exploration permit is taken under a resumption law.

(3) The Minister may approve the reduction, with or without conditions, or refuse the reduction.

(4) If the Minister approves the reduction, the Minister must give the holder a written notice stating—

(a) the reduction is approved; and

(b) the date of the approval; and

(c) if the Minister decides to approve the reduction on conditions—the conditions and reasons for the decision.

(5) If the Minister refuses the reduction, the Minister must give the holder a written notice stating the reasons for the decision.

(6) The reduction takes effect on the date it is approved.

(7) Compensation is not payable for the reduction.

141 Conditions of exploration permit

(1) Each exploration permit shall be subject to—

(aa) a condition that the holder must—

(i) comply with the mandatory provisions of the land access code and the small scale mining code to the extent the codes apply to the holder; and

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(ii) ensure any other person carrying out an authorised activity for the exploration permit complies with the mandatory provisions of the land access code and the small scale mining code; and

(a) a condition that the holder shall carry out such programs of work and such studies for the purposes for which the exploration permit was granted and in accordance with this Act and the conditions of the exploration permit and for no other purpose; and

(b) a condition that the holder must carry out improvement restoration for the exploration permit; and

(c) a condition that the holder prior to the termination for whatever cause of the exploration permit shall remove all equipment and plant on or in the area of the exploration permit unless otherwise authorised by the Minister; and

(d) a condition that without the prior approval in writing of the Minister the holder shall not obstruct or interfere with any right of access had at any time during the term of the exploration permit by any person in respect of the area of the exploration permit for so long as that right of access is exercised; and

(e) a condition that the holder must give the Minister, in the way prescribed by regulation, the reports, returns, documents and statements required to be given to the Minister under a regulation; and

(f) a condition that the holder must, when the Minister directs, give to the Minister a report—

(i) about the exploration permit, that is in addition to any report mentioned in paragraph (e); and

(ii) about materials obtained because of the holder's activities under the exploration permit; and

Note—

For other relevant provisions about giving a document to the Minister, see section 386O.

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(g) a condition that the holder—

(i) shall pay the rental as prescribed; and

(ii) shall deposit as required by the Minister any security from time to time under this Act; and

(h) a condition that the holder shall comply with this Act and other mining legislation; and

(i) such other conditions as are prescribed; and

(j) such other conditions as are determined by the Minister.

(4) The holder of an exploration permit and all persons acting under the authority of the permit shall comply with the conditions for the time being of the permit.

(5) Conditions may be imposed in respect of an exploration permit that require compliance with specified codes.

(6) Despite subsections (1) and (5), a condition must not be determined, imposed, prescribed or varied if the condition, or the condition as varied, is the same, or substantially the same, or inconsistent with, a relevant environmental condition for the exploration permit.

141AA Additional conditions of exploration permit relating to native title

(1) Conditions determined for an exploration permit by the Minister under section 141(1)(j) may include native title protection conditions for the permit.

(2) Subsection (1) does not limit section 141(1)(j).

(3) In this section—

native title protection conditions, for an exploration permit, means conditions that—

(a) are about ways of minimising the impact of the permit on native title in relation to the land affected by the permit, including ways of accessing the land and ways anything authorised under the permit may be done; and

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(b) are identified in the permit as native title protection conditions for the permit.

141B Other agreement conditions

(1) This section applies if—

(a) a registered indigenous land use agreement under the Commonwealth Native Title Act, or an agreement mentioned in section 31(1)(b) of the Commonwealth Native Title Act, provides for the grant, renewal or variation of, or another act concerning, an exploration permit; and

(b) the State is a party to the agreement; and

(c) the agreement includes a requirement that, if the act is done, the exploration permit must be subject to conditions stated in the agreement (the ***stated conditions***); and

(d) the act is done.

(2) The exploration permit is subject to the stated conditions.

141C Application to vary conditions of existing permit

(1) The holder of an exploration permit (the ***existing permit***) may apply to the Minister for a variation of the conditions of the existing permit.

(2) The provisions of this chapter apply, with necessary changes, to an application under subsection (1) as if it were an application under section 133.

(3) Without limiting subsection (2), in deciding the application, the Minister may—

(a) vary the conditions of the existing permit by imposing conditions under section 141(1)(j) in addition to any conditions that apply under the existing permit; and

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(b) fix an amount of security to be deposited under section 144 in addition to any security for the existing permit.

(4) Subsections (2) and (3) apply in relation to an exploration permit for coal despite section 130A.

(5) The chief executive must record in the register the details of any varied conditions applying to the existing permit, including any conditions imposed as mentioned in subsection (3)(a).

144 Provision of security

(1) Before an exploration permit is granted or renewed or a condition of the permit is varied, the Minister, taking into consideration the program of work, or activities, proposed to be carried out under the permit, must determine the amount of the security to be deposited by the holder of that permit as reasonable security for—

(a) compliance with the conditions of the exploration permit; and

(b) compliance with the provisions of this Act; and

(c) rectification of any actual damage that may be caused by any person whilst purporting to act under the authority of the exploration permit to pre-existing improvements for the exploration permit; and

(d) amounts (other than penalties) payable to the State under this Act.

(2) A person who holds more than 1 exploration permit may elect to deposit a single amount of security for all exploration permits held by the person.

(3) The Minister is to decide the amount of security to be deposited under subsection (2).

(4) An exploration permit must not be granted or renewed, and a condition of an exploration permit must not be varied, until

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the applicant for the grant, renewal or variation deposits the security decided under this section.

(5) If the Minister is satisfied—

(a) a condition of an exploration permit has not been complied with; or

(b) a provision of this Act has not been complied with in relation to an exploration permit; or

(c) someone claiming to act under an exploration permit, or to have entered land on the permit holder's instructions, caused damage mentioned in subsection (1)(c);

the Minister may require the permit holder to take the steps necessary to stop the noncompliance or repair the damage.

(6) Also, the Minister may use any of the security deposited by the holder to stop the noncompliance or repair the damage.

(7) Subsections (5) and (6) do not apply if the holder satisfies the Minister that the person responsible for the noncompliance or damage was not on the land with the holder's approval or on the holder's instructions when the noncompliance or damage happened.

(8) If, at any time (whether during or within 20 business days after the expiration of the term of an exploration permit) the amount or any part of the amount deposited under this section is utilised as provided by subsection (5) or (6) or the Minister considers that, in view of the damage caused or likely to be caused by any person purporting to act under the authority of the exploration permit or upon the instruction of the holder or for any other reason, a further amount of security should be deposited in respect of that exploration permit, the Minister shall require the holder or former holder of the exploration permit, within the time specified by the Minister, to deposit the further specified security.

(9) The Minister may accept a bond or a guarantee or indemnity by, or other financial arrangement with, a financial institution, insurance company or another credit provider approved by the Minister or other form of security acceptable to the Minister

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as the whole or part of the security to be deposited under this section.

(10) It shall be a condition of an exploration permit that the holder shall deposit security or further security from time to time in accordance with a requirement made as provided by this section.

(11) Subject to subsections (13) and (14), if an exploration permit terminates, the Minister may, not earlier than 6 months after the termination, refund to the permit holder the amount of security deposited for the permit and not used after deducting the amounts the Minister considers should be kept towards—

(a) remedying anything caused by noncompliance with the conditions of the permit or an order or direction given by the Minister to the permit holder; and

(b) amounts (other than penalties) the holder owes to the State under this Act (whether they become owing before or after the termination).

(12) If the Minister accepts a bond, guarantee or indemnity by, or another financial arrangement with, a financial institution, insurance company or credit provider as security under this section, any amount payable to the holder under subsection (11) must be refunded to the financial institution, insurance company or credit provider and not to the holder of the exploration permit to which the security relates.

(13) Subsection (11) does not apply to a person who elects to deposit security for all exploration permits held by the person if the person continues to hold an exploration permit for which the security is held.

(14) However, the Minister may, at the person's written request, reduce the amount of security held for the person's exploration permits to an amount decided by the Minister.

(15) If the security deposited was money, an amount equal to the reduction is to be refunded to the person or in accordance with any written direction the holder gives to the chief executive.

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146 Initial term of exploration permit

(1) Unless the Minister in the particular case otherwise determines the initial term of an exploration permit shall, unless the permit is sooner surrendered or cancelled, be for a period not exceeding 5 years commencing on the date specified in the permit (being a date not earlier than the date of grant of the permit).

(2) However, the initial term of an exploration permit granted in response to a call for EP (coal) tenders or EP (non-coal tenders) must be for the required period for the proposed program of work for the permit.

(3) In this section—

required period, for the proposed program of work for an exploration permit granted in response to a call for EP (coal) tenders or EP (non-coal tenders), means the period that the call states is the period for which the program must apply.

147 Application for renewal of exploration permit

(1) The holder of an exploration permit may, within the renewal period, apply to the chief executive for a renewal of the permit.

(2) The application must be—

(a) made in the approved form; and

(b) accompanied by the fee prescribed under a regulation; and

(c) accompanied by a statement—

(i) describing the program of work proposed to be carried out under the authority of the exploration permit, if renewed; and

(ii) detailing the estimated human, technical and financial resources to be used to carry out the exploration work during each year of the term of the exploration permit, if renewed; and

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(iii) detailing the applicant's financial and technical resources for carrying out the exploration work.

(3) In this section—

renewal period means the period that is—

(a) at least 3 months, or any shorter period allowed by the Minister in the particular case, before the current term of the permit expires; and

(b) not more than 6 months before the current term expires.

147A Decision on application

(1) The Minister may renew an exploration permit if the Minister is satisfied of each of the following—

(a) the holder of the permit has—

(i) observed and performed all the covenants and conditions applying to the permit and required to be observed and performed by the holder; and

(ii) complied with this Act in relation to the permit;

(b) the activities proposed to be carried out during the renewed term are appropriate and acceptable;

(c) the financial and technical resources available to the holder to carry out the proposed activities during the renewed term are appropriate;

(d) the public interest will not be adversely affected by the renewal.

(2) The renewal may be granted for the further term of not more than 5 years decided by the Minister.

(3) The renewed permit is subject to—

(a) any conditions prescribed under a regulation; and

(b) any conditions decided by the Minister.

(4) The Minister may refuse to renew the permit if the Minister—

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(a) has served on the holder a notice in the approved form asking the holder to show cause, within the period stated in the notice, why the renewal should not be refused; and

(b) after considering the holder's response, is satisfied the renewal should be refused.

(5) As soon as practicable after deciding the application for the renewal, the Minister must give the holder a written notice stating—

(a) the decision; and

(b) if the decision is to grant the renewal on conditions, or to refuse the renewal, the reasons for the decision.

147C Continuation of permit while application being dealt with

(1) This section applies to an application for renewal of an exploration permit if—

(a) the application is not withdrawn, refused or granted before the permit's expiry day ends; and

(b) after the expiry day, the holder—

(i) continues to pay rental on the permit and other amounts required to be paid under this Act; and

(ii) otherwise complies with this Act and the permit conditions.

(2) If the application is a properly made application, the permit continues in force subject to the rights, entitlements and obligations in effect immediately before the end of the expiry day until the application is withdrawn, refused or granted.

(3) If the application is an outstanding request application, the permit continues in force subject to the rights, entitlements and obligations in effect immediately before the end of the expiry day until either of the following days, whichever happens first—

(a) the application is withdrawn;

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(b) the period in which the action that must be taken under section 386K(1) ends.

(4) In this section—

outstanding request application, for renewal of an exploration permit, means an application—

(a) that complies with section 147(2)(a) and (b), but does not comply with all or part of section 147(2)(c); and

(b) for which—

(i) the chief executive has given a notice under section 386J(1); and

(ii) the period to comply with the notice under section 386K(1) ends after the permit expiry day; and

(iii) the notice has not been complied with.

properly made application, for renewal of an exploration permit, means an application that complies with all of section 147(2).

147D When term of renewed permit starts

(1) If an exploration permit is renewed before its expiry day ends, the term of the renewed permit starts on the day after the expiry day.

(2) If the permit is renewed after the expiry day, the term of the renewed permit is taken to have started on the day after the expiry day.

147E When new conditions of renewed permit start

(1) If a renewed exploration permit is subject to conditions (the ***new conditions***) different from, or not included in, the permit conditions applying immediately before its renewal, the new conditions apply from the later of the following—

(a) the start of the term of the renewed permit;

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(b) the day the renewal is granted.

(2) However, if the permit is continued in force under section 147C, the holder must pay rental on the permit from the day after its expiry day at the rate that would have been payable, from time to time, if the renewed exploration permit had been renewed on the day after the expiry day.

(3) Subsection (2) applies even though payment of rental may be a condition of the permit.

(4) If the application for renewal of the permit is withdrawn or is refused, the chief executive must refund the overpaid rental to the applicant.

(5) In this section—

overpaid rental means the annual rental overpaid because of the withdrawal or refusal, worked out proportionately for the whole months remaining after the withdrawal or refusal until the end of the year for which the rental was paid.

147F Renewal of permit must be in name of last recorded transferee

(1) This section applies if a transfer of an exploration permit is registered under the Common Provisions Act—

(a) after the date on which an application for renewal of the permit is made; and

(b) before the application is decided by the Minister.

(2) Any renewal granted on the application must be in the name of the transferee under the last transfer registered before the grant of the renewal.

148 Rights and obligations upon application for mining claim, mining lease or mineral development licence

(1) The holder of an exploration permit who, during the term of the exploration permit, makes application for the grant of—

(a) a mining claim; or

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(b) a mining lease; or

(c) a mineral development licence;

in respect of any part of the area of the exploration permit, shall, during the period from the expiration of the exploration permit until the determination of the application, for so long as the provisions of this Act and the terms and conditions that would apply if the permit were current are complied with, have all the responsibilities, powers, authorities and duties that the holder would have had in respect of the land the subject of the application if the exploration permit was current but during that period no rental shall be payable under this part in respect of any whole sub-blocks of land the subject of the application.

(2) The entitlements of the holder of an exploration permit are not reduced or limited by reason only of the holder's application for the grant of a mining claim, mining lease or mineral development licence in respect of any part of the area of the exploration permit.

160 Contravention by holder of exploration permit

(1) If the Minister considers that the holder of an exploration permit—

(a) has carried out activities that are not bona fide for the purposes for which the exploration permit was granted; or

(b) has failed to pay any moneys (other than rental) payable thereunder or in respect thereof by the due date for payment; or

(c) has failed to comply with any condition that is to be observed and performed by the holder under or in respect of the exploration permit, other than a condition with respect to matters referred to in subsection (2)(a) or (b); or

(d) has failed to report to the Minister upon the discovery of any mineral as required by section 176;

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the Minister may—

(e) cancel the exploration permit; or

(f) impose on the holder a penalty not exceeding 500 penalty units.

(2) If the Minister considers that the holder of an exploration permit—

(a) has failed to pay the rental payable thereunder by the date due for payment; or

(b) has failed to pay a penalty imposed on the holder pursuant to subsection (1)(f) within the time allowed for the payment by the Minister;

the Minister may cancel the exploration permit and shall notify the holder of the exploration permit and every person who currently holds a recorded interest in respect of the exploration permit accordingly.

(3) The Minister shall not act pursuant to subsection (1) until the Minister has, by notice in writing in the approved form served on the holder of the exploration permit, called upon the holder to show cause within the time specified therein why the exploration permit should not be cancelled or a penalty imposed and served a copy of the notice on every person who currently holds a recorded interest in the exploration permit and such cause has not been shown to the satisfaction of the Minister.

(4) When the Minister pursuant to this section cancels an exploration permit the Minister shall notify the holder and every person who holds a recorded interest in the exploration permit accordingly.

(5) For the purposes of this section a recorded interest in an exploration permit does not include an associated agreement recorded in the register under the Common Provisions Act.

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161 Surrender of exploration permit

(1) The holder of an exploration permit may, by notice in writing to the chief executive, surrender the permit.

(3) A surrender of an exploration permit shall take effect on the day next following its acceptance by the Minister except in respect of sub-blocks the subject of an application for a new exploration permit made under subsection (4).

(4) Where, at the time when the holder of an exploration permit purports to surrender the permit, the holder duly makes application for a new exploration permit in respect of the whole or part of the area of the exploration permit to be surrendered, the purported surrender shall take effect immediately prior to the grant of the new exploration permit.

(5) The Minister may accept a surrender of an exploration permit only if the Minister is satisfied—

(a) the holder has complied with the condition to carry out improvement restoration for the permit; and

(b) any relevant environmental authority has been cancelled or surrendered under the Environmental Protection Act.

(6) If the Minister is not satisfied the holder has complied with the condition, the Minister may, by written notice, give the holder reasonable directions about carrying out improvement restoration for the exploration permit.

(7) The holder must comply with the directions.

Maximum penalty for subsection (7)—200 penalty units.

162 Adjustment of rental etc. upon surrender etc. of exploration permit

(1) Upon a surrender of an exploration permit or the reduction in the area of the permit such adjustments as the Minister approves shall be made with respect to the rental payable under the exploration permit and security deposited and to the terms and conditions of the permit.

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(2) Any moneys payable to the Crown under the adjustments approved by the Minister pursuant to subsection (1) which have not been recovered by utilisation of the security deposit may be recovered as a debt due and owing to the Crown by action in the Land Court.

(3) In an action under subsection (2) for recovery of a debt due to the Crown, the production to the Land Court of a certificate by the chief executive certifying the amount of that debt shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the debt and the amount thereof.

163 Access and compensation provisions

The Common Provisions Act, chapter 3 contains provisions about access, compensation and related matters for exploration permits.

166 Improvement restoration for exploration permit

(1) This section applies on the termination of an exploration permit, other than—

(a) by surrender under section 161; or

(b) for the granting of a new exploration permit, a mining claim, a mineral development licence or a mining lease over the area of the terminated permit.

(2) If the Minister is not satisfied the holder has satisfactorily complied with the condition to carry out improvement restoration for the exploration permit, the Minister may, by written notice, give the holder reasonable directions about carrying out the restoration.

(3) The holder must comply with the directions.

Maximum penalty—200 penalty units.

(4) The holder and the holder's employees or agents may, to the extent reasonable and necessary to comply with the directions—

(a) enter land stated in the notice; and

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(b) bring on to the land vehicles, vessels, machinery and equipment.

167 Producing exploration permit

(1) This section applies if—

(a) a person purports to enter or be on land under the authority of an exploration permit; and

(b) the owner of the land, or an agent of the owner, asks the person for proof of the person's authority to enter or be on the land.

(2) The person must produce the exploration permit, or a copy of the permit, to the owner or agent.

(3) If the person fails to comply with subsection (2), the person does not have any entitlements under this chapter during the period of the person's noncompliance.

(4) This section does not prevent a person entering or being on land to deliver goods or substances or provide services related to the purpose for which an exploration permit is granted to a person who is lawfully on the land under this chapter.

(5) In this section—

copy, of an exploration permit, includes an extract from the register of the details of the permit recorded in the register.

168 Utilisation of security deposit towards subsequent exploration permit

Where the holder of an exploration permit makes application for a further exploration permit, the Minister, if satisfied that the whole or part of the security deposited in respect of the existing permit is or will be refundable under section 144, notwithstanding that the period of 6 months after the termination of that permit may not have elapsed, may retain that security or part thereof (together with any further security fixed by the Minister) as the security (in which case it shall be taken to be or to be part of the security) deposited by the

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applicant in respect of the application for the further exploration permit and not refund that amount to the holder.

175 Chief executive may recommend action to ease concerns or other action

(1) If the chief executive considers an exploration permit holder should take action to ease concerns of an owner of land or another exploration permit holder, or should take some other action, the chief executive may recommend the action to the Minister.

(2) The Minister may give the exploration permit holder the directions the Minister considers appropriate about the recommended action.

(3) A failure by the holder to comply with the Minister's directions is taken to be a breach of a condition of the exploration permit.

(4) If the Minister gives a direction under subsection (2), the chief executive must give a copy to—

(a) if the recommended action under subsection (1) relates only to native title protection conditions under section 141AA—any person identified in the conditions as a native title party; or

(b) if the recommended action under subsection (1) relates only partly to the native title protection conditions—

(i) any person identified in the conditions as a native title party; and

(ii) the owner of the land; or

(c) otherwise—the owner of the land.

(5) If the recommended action under subsection (1) is action to ease concerns of an owner of land or another exploration permit holder, the chief executive must give the land's owner and the exploration permit holder written notice of—

(a) the substance of any recommendation made to the Minister under subsection (1) or, if the chief executive

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decides not to make a recommendation, the chief executive's decision; and

(b) any other action the chief executive has taken to ease the concerns of the owner or exploration permit holder.

176 Discovery of minerals to be reported

(1) The holder of an exploration permit shall, within 14 days after discovery of any mineral of commercial value in what appears to be payable quantities within the area specified in the exploration permit by any person acting under the authority of the exploration permit, report to the Minister the fact of that discovery and such other particulars as the Minister requires.

(2) The Minister may direct the holder of an exploration permit to apply for a mining claim, mineral development licence or mining lease over all or part of the land specified in the exploration permit as the Minister directs in respect of any mineral discovered.

(3) If the holder of an exploration permit to whom a notice under subsection (2) is given does not apply for a mining claim, mineral development licence or a mining lease as directed within the specified time, the Minister may in the Minister's discretion cancel the exploration permit.

(4) Any refund of moneys held in respect of an exploration permit that is cancelled pursuant to subsection (3) (including any security deposited) shall be at the Minister's discretion.

176A Application to add excluded land to existing permit

(1) The holder of an exploration permit (the ***existing permit***) may apply to the Minister to add excluded land to the existing permit.

(2) The provisions of this chapter apply, with necessary changes, to an application under subsection (1) as if it were an application under section 133.

(3) Without limiting subsection (2), in deciding the application, the Minister may—

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(a) impose conditions under section 141(1)(j) in addition to any conditions that apply under the existing permit; and

(b) fix an amount of security to be deposited under section 144 in addition to any security for the existing permit.

(4) On the granting of the application, the excluded land is included in the existing permit.

(5) In this section—

excluded land means land that was the subject of a specific exclusion when the existing permit was granted or that was taken to be excluded under section 132.

177 Reduction of area of exploration permit upon grant of mining claim, mineral development licence or mining lease

Upon the grant of a mining claim, mineral development licence or mining lease consequent upon an application made by the holder of an exploration permit granted in respect of the same area for the same mineral (whether or not at the direction of the Minister) or by an eligible person with the consent of the holder, the area of the exploration permit shall be reduced accordingly and the terms and conditions applying to the exploration permit may be varied as the Minister directs.

178 Discovery etc. of mineral does not vest property

A person who whilst acting under the authority of an exploration permit discovers or takes any mineral does not thereby acquire property therein and shall not dispose of any such mineral except with the consent of the Minister whose consent may be subject to such terms and conditions as the Minister thinks fit (including prescribed conditions as to the payment of royalties).

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178A Activity report for exploration permit

A regulation may—

(a) require a holder of an exploration permit to give the Minister a report (an ***activity report***) about the activities carried out under the permit; and

(b) prescribe the following for the activity report—

(i) when the report is to be given;

(ii) the information to be contained in the report.

178B Partial relinquishment report for exploration permit

A regulation may—

(a) require a holder of an exploration permit to give the Minister a report (a ***partial relinquishment report***) about a reduction in the area of the permit; and

(b) prescribe the following for the partial relinquishment report—

(i) when the report is to be given;

(ii) the information to be contained in the report.

178C Final report for exploration permit

A regulation may—

(a) require a holder of an exploration permit to give the Minister a report (a ***final report***) summarising the results of exploration carried out under the permit during the whole of its term; and

(b) prescribe the following for the final report—

(i) when the report is to be given;

(ii) the information to be contained in the report.

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Chapter 5 Mineral development licences

Part 1 Mineral development licences generally

179 Mineral development licence

Unless otherwise approved by the Minister pursuant to section 226(3), a mineral development licence in respect of a mineral occurrence may be applied for by an eligible person in respect of land which, at the time the application for the grant is made, is in the area of—

(a) an exploration permit; or

(b) a mineral development licence;

in respect of the same mineral of which the applicant or, where more than 1 person is the applicant, at least 1 of them is, with or without others, the holder.

180 Only eligible persons to hold mineral development licences

A mineral development licence shall not be held by a person who is not an eligible person.

181 Obligations and entitlement under mineral development licence

(1) During the currency of a mineral development licence, the holder shall carry out or cause to be carried out such activities as are specified in the licence by the Minister.

(2) The Minister may specify in a mineral development licence that no activity need be carried out for the term of the licence or for such period as is specified therein.

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(3) Without in any way limiting the activities that the Minister may specify in a mineral development licence, activities leading to the evaluation and economic development of an ore body by or on behalf of the holder may include—

(a) geological, geophysical and geochemical programs and other works as are reasonably necessary to evaluate the potential for development of any mineral occurrence of possible economic potential occurring in or on the area of the mineral development licence; and

(b) mining feasibility studies; and

(c) metallurgical testing; and

(d) environmental studies; and

(e) marketing studies; and

(f) engineering and design studies; and

(g) such other activities as the Minister considers appropriate.

(4) During the currency of a mineral development licence—

(a) the holder—

(i) may carry out or cause to be carried out any activities (including activities referred to in subsection (2)) as are appropriate for the purpose for which the licence is granted; and

(ii) may, in relation to the area of the mineral development licence, do all such things as are authorised or were authorised, at the time of the application for the mineral development licence, under the relevant exploration permit then held by the applicant for the mineral development licence; and

(iii) may carry out or cause to be carried out the plugging and abandoning, or otherwise remediating, of a legacy borehole and rehabilitating of the surrounding area in

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compliance with the requirements prescribed under a regulation; and

(b) the holder and any person who acts for the purpose of carrying out any activity authorised by the mineral development licence with or by such vehicles, vessels, machinery and equipment as may be necessary or expedient for the purpose may, in compliance with the Common Provisions Act, chapter 3, enter any part of the area of the mineral development licence for any purpose permitted or required under the licence or by this Act; and

(c) the holder of the mineral development licence, subject to compliance with this Act, may have considered for grant, in priority to all other persons, any number of mineral development licences and mining leases relating to any minerals specified in the mineral development licence in respect of any land in the area of the mineral development licence and may enter that land for the purpose of doing all acts necessary to comply with this Act relating to an application therefor.

(12) The holder of a mineral development licence, and each person who enters or is upon land under the authority of the licence, shall comply with the terms and conditions upon which any consent required to be given under this Act in respect thereof was given by the owner of that land.

(18) For the purposes of exercising entitlements under this part a person who enters or is upon land under the authority of a mineral development licence may stay at night thereon and for that purpose may set up temporary accommodation thereon.

(19) During the currency of a mineral development licence, the rights of the holder of the licence relate, and are taken to have always related, to the whole of the area of the licence.

182 Land is excluded from area of mineral development licence if covered by other authority under Act

(1) This section applies if—

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(a) the chief executive accepts lodgement of an application for a mineral development licence for particular land; and

(b) all or some of the land applied for in the accepted application is—

(i) in the area of an existing mining claim or mining lease; or

(ii) land applied for in an earlier application for a mining claim or mining lease.

(2) Land mentioned in subsection (1)(b) that is within the boundaries of the land applied for in the accepted application, and its surface, (***excluded land***) is taken to be excluded from the area of a mineral development licence granted for the land applied for in the accepted application.

(3) However, the land is excluded land—

(a) if subsection (1)(b)(i) applies—only while it is in the area of an existing mining claim or mining lease; or

(b) if subsection (1)(b)(ii) applies—

(i) until the earlier application is abandoned or rejected; or

(ii) while it is in the area of a mining claim or mining lease granted on the earlier application.

(4) If excluded land within the boundaries of the area of the mineral development licence ceases to be excluded land, it is taken to be included in the area of the mineral development licence unless the mineral development licence provides otherwise.

183 Application for mineral development licence

(1) An application for the grant of a mineral development licence must—

(a) be in the approved form; and

(b) specify the name of each applicant; and

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(c) specify the name and address for service of 1 person upon whom any notice may be served on behalf of the applicant or the applicants; and

(d) describe all parcels of land the whole or part of which are applied for in the application and specify the current use of the land and the names and addresses of the owner or owners of the land and of land which is to be used as access thereto; and

(e) define the boundary of the area of the proposed mineral development licence; and

Note—

Section 386R sets out the requirements for defining the boundary of the area of a proposed mining tenement.

(f) specify the mineral or minerals in respect of which the mineral development licence is sought; and

(g) give reasons why the mineral development licence should be granted in respect of the area and shape of the land described in the application; and

(h) define the boundary of any area of land outside the area of the proposed mineral development licence intended to be used to access the surface area of the land proposed to be included in the proposed licence area; and

(i) be accompanied by a visual representation of the boundaries and land mentioned in paragraphs (e) and (h); and

(j) nominate the term of the mineral development licence sought and give reasons therefor; and

(k) be accompanied by the consent in writing of each person who alone or with others is the holder of the exploration permit or the mineral development licence in respect of the land and the mineral the subject of the application and is not the applicant; and

(l) be lodged with the chief executive; and

(m) be accompanied by a statement—

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(i) giving a detailed description and technical particulars of the mineral occurrence for which the mineral development licence is sought together with any necessary supporting documents; and

(ii) stating any activities proposed to be carried out under the mineral development licence, including, for example, work programs, amounts to be spent and studies to be performed; and

(iii) stating the estimated human, technical and financial resources proposed to be committed to authorised activities for the mineral development licence during each year of the licence, if granted; and

(n) be accompanied by—

(i) a statement, separate from the statement mentioned in paragraph (m), detailing the applicant's financial and technical resources; and

(ii) proof of the applicant's identity; and

(iii) the application fee prescribed under a regulation.

(2) Only an eligible person may apply for a mineral development licence.

185 Priority of applications for grant of mineral development licences

Applications for the grant of mineral development licences duly made in respect of or including the same land shall take priority according to the Minister's determination.

186 Minister may grant or refuse application

(1) The Minister may—

(a) grant a mineral development licence, with or without conditions, for all or part of the land the subject of an application (the ***relevant land***) for the licence; or

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(b) refuse the application.

(2) Without limiting subsection (1), the Minister may refuse to grant a mineral development licence if the Minister considers the grant is not in the public interest.

(3) The Minister may grant the mineral development licence only if—

(a) the Minister is satisfied—

(i) the requirements of this Act have been complied with; and

(ii) the applicant is an eligible person; and

(iii) the applicant has paid rental for the first year of the term of the licence under section 193(1); and

(b) the Minister has approved the statements that, under section 183(1), accompanied the application.

Notes—

1 Under section 190, a mineral development licence can not be granted until the applicant has deposited security decided under that section.

2 If the application relates to acquired land, see also section 10AAC.

(4) The Minister must refuse to grant a mineral development licence for land if any part of the land is—

(a) in a fossicking area; or

(b) subject to a mineral development licence for the same mineral.

(5) However, subsection (4)(a) does not apply if the application was made but not decided before the land became a fossicking area.

(6) In deciding whether to approve the statements mentioned in subsection (3)(b), the Minister must have regard to—

(a) whether there exists to a high degree of definition on or in the land a significant mineral occurrence of possible economic potential; and

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(b) whether the area of land applied for is appropriate to further investigation of that occurrence; and

(c) whether the applicant has the financial and technical capability to comply with the conditions of the mineral development licence under section 194.

(7) If a mineral development licence is only granted for part of the relevant land—

(a) the application is taken to be refused for the rest of the relevant land; and

(b) the Minister must give the applicant written notice of the reasons for the refusal.

186A Details of mineral development licence to be recorded in register

The chief executive must record in the register the following details of a mineral development licence—

(a) the identification number of the licence;

(b) the name of the holder;

(c) the address for service of notices on the holder;

(d) the description of land for which the licence is granted;

(e) the term and date of commencement of the licence;

(f) the conditions, other than conditions prescribed under this Act, to which the licence is subject;

(g) the minerals the subject of the licence.

187 Holder to notify owners of land of grant or renewal

Within 20 business days, or such longer period as the Minister shall in the particular case allow, after the grant or renewal of a mineral development licence, the holder shall give notice in the approved form to the owners of the parcels of land in the area of the licence.

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189 Abandonment of application for mineral development licence

(1) The applicant for the grant of a mineral development licence may, at any time before the grant of the mineral development licence, by notice in writing to the chief executive abandon the application in relation to all or part of the area to which it relates.

(2) The abandonment of an application for the grant of a mineral development licence shall take effect on the day next following its receipt by the chief executive.

(3) If the application is abandoned in relation to part only of the land to which it relates, the application must be amended to define the area in relation to which the application is to remain in force (the ***remaining area***).

(4) The remaining area must be described and defined in the way required under section 183(1)(d) and (e).

(5) Upon the abandonment of an application for the grant of a mineral development licence taking effect the land that ceases to be comprised in that application shall form part of any existing exploration permit or mineral development licence over that land of which the applicant is holder.

190 Provision of security

(1) Before a mineral development licence is granted or renewed or a condition of the licence is varied or approval is given to add stated minerals to the licence, the Minister, taking into consideration the matters outlined in section 183(1)(m)(i) and (ii), shall determine the amount of security to be deposited by the holder of that licence as reasonable security for—

(a) compliance with the conditions of the licence; and

(b) compliance with the provisions of this Act; and

(c) rectification of any actual damage that may be caused by any person whilst purporting to act under the authority of the mineral development licence to pre-existing improvements for the licence; and

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(d) amounts (other than penalties) payable to the State under this Act.

(2) A mineral development licence must not be granted or renewed, a condition of a mineral development licence must not be varied, and an approval must not be given to add stated minerals to a mineral development licence, until the applicant for the grant, renewal, variation or approval deposits the security decided under this section.

(3) The Minister, if satisfied that any condition of the mineral development licence or any provision of this Act has not been complied with or that damage referred to in subsection (1)(c) has been caused by any person purporting to act under the authority of a mineral development licence or who enters land upon the instruction of the holder, the Minister may require that person to take all action necessary to rectify that noncompliance or damage and, save where the person was not the holder and was not upon the land with the holder's approval at the time the damage was caused, may utilise for that purpose the whole or part of the amount of the security deposited in respect of that mineral development licence.

(4) If, at any time (whether during or within 20 business days after the expiration of the term of a mineral development licence) the amount or any part of the amount deposited under this section is utilised as provided by subsection (3) or the Minister considers that, in view of the damage caused or likely to be caused by any person purporting to act under the authority of the mineral development licence or upon the instruction of the holder or for any other reason, a further amount of security should be deposited in respect of that mineral development licence, the Minister shall require the holder or former holder of the mineral development licence, within the time specified by the Minister, to deposit the further security.

(5) The Minister may accept a bond or a guarantee or indemnity by, or other financial arrangement with, a financial institution, insurance company or another credit provider approved by the Minister or other form of security acceptable to the Minister

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as the whole or part of the security to be deposited under this section.

(6) It shall be a condition of a mineral development licence that the holder shall deposit security or further security from time to time in accordance with a requirement made as provided by this section.

(7) Within 20 business days after termination of a mineral development licence, the person who was the holder shall notify all owners of land in the area of the mineral development licence that any claims for rectification of actual damage to land caused under the authority or purported authority of the mineral development licence must be lodged within 6 months of termination with the chief executive.

(8) Where a mineral development licence has expired or been terminated, the Minister—

(a) in a case where every owner of land in the area of the mineral development licence certifies that there is no actual damage to land that should be rectified—at any time; or

(b) in any other case—not earlier than 6 months after the expiration or the termination;

shall, subject to subsection (9), refund to the holder of the licence (or as the holder in writing directs) any security deposited and not utilised as provided by subsection (4) less any amount determined by the Minister to be retained towards—

(c) rectification of any matters caused by the noncompliance with any of the conditions of the mineral development licence or with any order or direction made or given by the Minister under this Act and directed to the holder; and

(d) amounts (other than penalties) the holder owes to the State under this Act (whether the amounts became owing before or after the termination).

(9) If the Minister accepts a bond, guarantee or indemnity by, or another financial arrangement with, a financial institution,

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insurance company or another credit provider as security under this section, any amount payable to the holder under subsection (8) must be refunded to the financial institution, insurance company or credit provider and not to the holder of the mineral development licence to which the security relates.

192 Initial term of mineral development licence

(1) The initial term of a mineral development licence shall, unless the licence is sooner terminated, be for a period not exceeding 5 years (or such longer period as the Minister approves) commencing on the first day of the month which next follows the day on which the mineral development licence is granted.

(2) From the grant of a mineral development licence to the commencement of the initial term thereof the holder shall have all the entitlements, powers, duties and functions that the holder has during the term of the licence except section 193 shall not apply.

193 Rental payable on mineral development licence

(1) Rental for the first year of the term of a mineral development licence (its ***first rental period***) is payable before the granting of the licence under section 186.

(2) The amount of the rental payable in respect of the first rental period shall be an amount that bears to the rental payable for a rental year prescribed pursuant to subsection (4) for the rental year in which the first rental period falls the same proportion that the number of whole calendar months of the first rental period bears to 12.

(3) In respect of each rental year or part thereof of the term of a mineral development licence (other than the first rental period) a full rental year's rental shall be payable in advance not later than 31 August of the previous rental year.

(4) If the full rental payable for a rental year is paid in advance as prescribed by subsection (3), the amount of the rental shall be the amount prescribed under a regulation for that rental year.

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(5) If, for a particular rental year, rental is not paid in advance as prescribed by subsection (3)—

(a) the Minister shall, prior to 30 September of that rental year, notify the holder of and any person holding a recorded interest in the mineral development licence (other than an associated agreement recorded in the register under the Common Provisions Act) that the rental has not been paid as prescribed by subsection (3) and of the amount of rental as prescribed by paragraph (b); and

(b) the amount of the full rental payable for the rental year shall be payable before 1 December of that rental year and shall be an amount equal to the amount prescribed under a regulation for that rental year plus an amount equal to 15% of that prescribed amount.

(6) Upon the renewal of a mineral development licence, no further rental shall be payable in respect of the period that, if the renewal was a grant of a mineral development licence, would be the first rental period, except where that period commences on 1 September.

(7) Except as provided in subsection (8), where in any rental year a mineral development licence is surrendered or terminated through effluxion of time and is not renewed there shall be refundable to the last holder of the mineral development licence an amount that bears to the amount of the rental that was paid in respect of that rental year the same proportion that the number of whole calendar months from—

(a) the date of surrender or termination; or

(b) the date of rejection of the application for renewal;

whichever is the later, to 31 August of that rental year bears to 12.

(8) No amount shall be refunded pursuant to subsection (7) where a mineral development licence is surrendered within its first rental period after its original grant.

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194 Conditions of mineral development licence

(1) Each mineral development licence shall be subject to—

(a) a condition that the holder must—

(i) comply with the mandatory provisions of the land access code to the extent it applies to the holder; and

(ii) ensure any other person carrying out an authorised activity for the mineral development licence complies with the mandatory provisions of the land access code; and

(b) if the holder uses land outside the boundary of the area of the mineral development licence for access to the area of the mineral development licence, a condition that the holder may use the land only for the following purposes—

(i) to transport, by road across the surface of the land, something that is reasonably necessary to allow the holder to carry out an authorised activity for the mineral development licence;

(ii) to transport, by road across the surface of the land, any minerals mined under the authority of a mining tenement held by the holder;

(iii) to construct road transport infrastructure across the surface of the land that is reasonably necessary for the purpose of transporting a thing or mineral mentioned in subparagraph (i) or (ii); and

(c) a condition that the holder shall carry out such activities (if any) for which the mineral development licence was granted and in accordance with this Act and the conditions of the mineral development licence and for no other purpose; and

(d) a condition that the holder must carry out improvement restoration for the mineral development licence; and

(e) a condition that the holder, prior to the termination of the mineral development licence for whatever cause,

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shall remove all equipment and plant on or in the area of the mineral development licence unless otherwise authorised in writing by the Minister; and

(f) a condition that without the prior approval in writing of the Minister the holder shall not obstruct or interfere with any right of access had at any time during the term of the mineral development licence by any person in respect of the area of the mineral development licence for so long as that right of access is exercised; and

(g) a condition that the holder must give the Minister, in the way prescribed by regulation, the reports, returns, documents and statements required to be given to the Minister under a regulation; and

(h) a condition that the holder must, when the Minister requires, give to the Minister—

(i) a report about the mineral development licence, that is in addition to any report mentioned in paragraph (g); and

(ii) materials obtained because of the holder's activities under the mineral development licence; and

(i) a condition that the holder—

(i) shall pay the rental as prescribed; and

(ii) shall deposit as required by the Minister any security from time to time under this Act; and

(j) a condition that the holder shall comply with this Act and other mining legislation; and

(k) such other conditions as are prescribed; and

(l) such other conditions as are determined by the Minister.

(2) Without limiting subsection (1), the Minister may determine a condition of a mineral development licence if the Minister considers the condition is in the public interest.

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(3) The holder of a mineral development licence and all persons acting under the authority of the licence shall comply with the conditions for the time being of the licence.

(4) Conditions may be imposed in respect of a mineral development licence that require compliance with specified codes or industry agreements.

(5) Despite subsections (1), (2) and (4), a condition must not be determined, imposed, prescribed or varied if the condition, or the condition as varied, is the same, or substantially the same, or inconsistent with, a relevant environmental condition for the mineral development licence.

(6) A mineral development licence granted after the commencement of the *Mineral Resources Amendment Act 1998* is subject to a condition that the holder comply with the At Risk agreement.

194AAA Additional conditions of mineral development licence relating to native title

(1) Conditions determined for a mineral development licence by the Minister under section 194(1)(l) may include native title protection conditions for the licence.

(2) Subsection (1) does not limit section 194(1)(l).

(3) In this section—

native title protection conditions, for a mineral development licence, means conditions that—

(a) are about ways of minimising the impact of the licence on native title in relation to the land affected by the licence, including ways of accessing the land and ways anything authorised under the licence may be done; and

(b) are identified in the licence as native title protection conditions for the licence.

194AB Other agreement conditions

(1) This section applies if—

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(a) a registered indigenous use agreement under the Commonwealth Native Title Act, or an agreement mentioned in section 31(1)(b) of the Commonwealth Native Title Act, provides for the grant, renewal or variation of, or another act concerning, a mineral development licence; and

(b) the State is a party to the agreement; and

(c) the agreement includes a requirement that, if the act is done, the mineral development licence must be subject to conditions stated in the agreement (the ***stated conditions***); and

(d) the act is done.

(2) The mineral development licence is subject to the stated conditions.

194AC Application to vary conditions of existing licence

(1) The holder of a mineral development licence (the ***existing licence***) may apply to the Minister for a variation of the conditions of the existing licence.

(2) The provisions of this part apply, with necessary changes, to an application under subsection (1) as if it were an application under section 183.

(3) Without limiting subsection (2), in deciding the application, the Minister may—

(a) vary the conditions of the existing licence by imposing conditions under section 194(1)(l) in addition to any conditions that apply under the existing licence; and

(b) fix an amount of security to be deposited under section 190 in addition to any security for the existing licence.

(4) Without limiting subsection (3), the Minister may refuse to make a variation mentioned in subsection (3)(a) if the Minister considers the variation is not in the public interest.

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(5) The chief executive must record in the register the details of any varied conditions applying to the existing licence, including any conditions imposed as mentioned in subsection (3)(a).

194A Land Court's jurisdiction for At Risk agreement

(1) The Land Court has jurisdiction to hear and decide a proceeding about the following matters under a condition of a mineral development licence requiring compliance with the At Risk agreement—

(a) whether hardship, as defined under the agreement, exists;

(b) the fair market value of a property for the purposes of the agreement.

(2) In a proceeding under subsection (1)(a), the Land Court must consider—

(a) all relevant matters put before the committee in any mediation under the agreement; and

(b) the final recommendation made by the committee in the mediation.

(3) In a proceeding, a copy of the agreement as at a particular date, certified as a true copy by the chief executive, is admissible as evidence of the agreement at that date until the contrary is proved.

(4) Despite the *Limitation of Actions Act 1974*, a proceeding must start—

(a) for a matter that arose before the commencement of this section—within 1 year after the commencement; or

(b) for a matter that arose after the commencement of this section—within 1 year after the committee gives notice of its final recommendation about whether hardship, as defined under the agreement, exists.

(5) In this section—

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committee means the committee mentioned in the At Risk agreement.

197 Application for renewal of mineral development licence

(1) The holder of a mineral development licence may, within the renewal period, apply to the Minister for a renewal of the licence.

(2) The application must be—

(a) made in the approved form; and

(b) accompanied by the fee prescribed under a regulation; and

(c) accompanied by a statement—

(i) describing the program of work proposed to be carried out under the authority of the mineral development licence, if renewed; and

(ii) detailing the estimated human, technical and financial resources to be used to carry out activities under the mineral development licence during each year of the term of the mineral development licence, if renewed; and

(iii) detailing the applicant's financial and technical resources for carrying out the activities under the mineral development licence, if renewed.

(3) In this section—

renewal period means the period that is—

(a) at least 6 months, or any shorter period allowed by the Minister in the particular case, before the current term of the licence expires; and

(b) not more than 1 year before the current term expires.

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197A Decision on application

(1) The Minister may renew a mineral development licence if the Minister is satisfied of each of the following—

(a) the holder of the licence has complied with—

(i) the licence; and

(ii) this Act in relation to the licence;

(b) there exists on or in the land in relation to which the application is made a mineral occurrence of possible economic potential to sustain a mining operation;

(c) the activities proposed to be undertaken during the renewed term are appropriate;

(d) the financial and technical resources available to the holder to carry out the proposed activities during the renewed term are appropriate.

Note—

However, if the application relates to acquired land, see also section 10AAC.

(2) The renewal may be granted for the further term of not more than 5 years decided by the Minister.

(3) The renewed licence is subject to—

(a) any conditions prescribed under a regulation; and

(b) any conditions decided by the Minister, for the licence.

(4) Without limiting subsection (3), the Minister may decide a condition of the renewed licence if the Minister considers the condition is in the public interest.

(5) The Minister may refuse to renew the licence if the Minister—

(a) has served on the holder a notice in the approved form asking the holder to show cause, within the period stated in the notice, why the renewal should not be refused; and

(b) after considering the holder's response, is satisfied the renewal should be refused.

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(6) Without limiting subsection (5)(b), the Minister may refuse the renewal if the Minister considers the renewal is not in the public interest.

(7) As soon as practicable after deciding the application for the renewal, the Minister must give the holder a written notice stating—

(a) the decision; and

(b) if the decision is to grant the renewal on conditions, or to refuse the renewal, the reasons for the decision.

197C Continuation of licence while application being dealt with

(1) This section applies to an application for renewal of a mineral development licence if—

(a) the application is not withdrawn, refused or granted before the licence's expiry day ends; and

(b) after the expiry day, the holder—

(i) continues to pay rental on the licence and other amounts required to be paid under this Act; and

(ii) otherwise complies with this Act and the licence conditions.

(2) If the application is a properly made application, the licence continues in force subject to the rights, entitlements and obligations in effect immediately before the end of the expiry day until the application is withdrawn, refused or granted.

(3) If the application is an outstanding request application, the licence continues in force subject to the rights, entitlements and obligations in effect immediately before the end of the expiry day until either of the following days, whichever happens first—

(a) the application is withdrawn;

(b) the period in which the action that must be taken under section 386K(1) ends.

(4) In this section—

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outstanding request application, for renewal of a mineral development licence, means an application—

(a) that complies with section 197(2)(a) and (b), but does not comply with all or part of section 197(2)(c); and

(b) for which—

(i) the chief executive has given a notice under section 386J(1); and

(ii) the period to comply with the notice under section 386K(1) ends after the licence expiry day; and

(iii) the notice has not been complied with.

properly made application, for renewal of a licence, means an application that complies with all of section 197(2).

197D When term of renewed licence starts

(1) If a mineral development licence is renewed before its expiry day ends, the term of the renewed licence starts on the day after the expiry day.

(2) If the licence is renewed after the expiry day, the term of the renewed licence is taken to have started on the day after the expiry day.

197E When new conditions of renewed licence start

(1) If a renewed mineral development licence is subject to conditions (the ***new conditions***) different from, or not included in, the licence conditions applying immediately before its renewal, the new conditions apply from the later of the following—

(a) the start of the term of the renewed licence;

(b) the day the renewal is granted.

(2) However, if the licence is continued in force under section 197C, the holder must pay rental on the licence from the day after its expiry day at the rate that would have been

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payable, from time to time, if the renewed mineral development licence had been renewed on the day after the expiry day.

(3) Subsection (2) applies even though payment of rental may be a condition of the licence.

197F Renewal of licence must be in name of last recorded transferee

(1) This section applies if a transfer of a mineral development licence is registered under the Common Provisions Act—

(a) after the date on which an application for renewal of the licence is made; and

(b) before the application is decided by the Minister.

(2) Any renewal granted on the application must be in the name of the transferee under the last transfer registered before the grant of the renewal.

208 Adding other minerals to licence

(1) The holder of a mineral development licence for particular minerals may lodge a written application with the chief executive for the Minister's approval to add stated minerals to the licence.

(2) The application must be accompanied by the application fee prescribed under a regulation.

(3) The Minister may approve or reject the application.

(3B) Without limiting the grounds on which the Minister may reject the application, the Minister may reject it if the Minister considers that approving it is not in the public interest.

(4) The approval may be given on the conditions the Minister considers appropriate, including conditions requiring the holder to deposit a stated amount of additional security.

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(4A) Without limiting subsection (4), the Minister may decide a condition for the giving of the approval if the Minister considers the condition is in the public interest.

(5) If the Minister approves the application, the mineral development licence is taken to include the stated minerals from the day the Minister approves the application.

(6) The chief executive must record in the register the details of the approval.

209 Contravention by holder of mineral development licence

(1) If the Minister considers that the holder of a mineral development licence—

(a) has carried out activities that are not bona fide for the purposes for which the mineral development licence was granted; or

(b) has failed to pay any moneys (other than rental) payable thereunder or in respect thereof by the due date for payment; or

(c) has failed to comply with any condition that is to be observed and performed by the holder under or in respect of the mineral development licence, other than a condition with respect to matters referred to in subsection (2)(a) or (b);

the Minister may—

(d) cancel the mineral development licence; or

(e) impose on the holder a penalty not exceeding 1,000 penalty units.

(2) If the Minister considers that the holder of a mineral development licence—

(a) in any rental year has failed after notice given to the holder in accordance with section 193(5) to pay before 1 December of that rental year the amount of the rental payable under that section by that date in respect of that mineral development licence; or

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(b) has failed to pay a penalty imposed on the holder pursuant to subsection (1)(e) within the time allowed for the payment by the Minister;

the Minister may cancel the mineral development licence and shall notify the holder and each person who currently holds a recorded interest in respect of the mineral development licence accordingly.

(3) The Minister shall not act pursuant to subsection (1) until the Minister has, by notice in writing in the approved form served on the holder of the mineral development licence, called upon the holder to show cause within the time specified therein why the mineral development licence should not be cancelled or a penalty imposed and served a copy of the notice on every person who currently holds a recorded interest in respect of the mineral development licence and such cause has not been shown to the satisfaction of the Minister.

(4) When the Minister pursuant to this section cancels a mineral development licence the Minister shall notify the holder and every person who holds a recorded interest in respect of the mineral development licence accordingly.

(5) For the purposes of this section a recorded interest in a mineral development licence does not include an associated agreement for the licence recorded in the register under the Common Provisions Act.

210 Surrender of mineral development licence

(1) The holder of a mineral development licence may apply to surrender the mineral development licence or any part of the area of the mineral development licence at any time before the expiration of its term.

(3) The holder of a mineral development licence who desires to surrender a mineral development licence or any part of the area of the mineral development licence shall lodge with the chief executive—

(a) a notice of surrender in the approved form; and

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(b) in the case of a surrender of part of the area of a mineral development licence—

(i) a plan prepared in a manner acceptable to the chief executive of that part of the area to be retained in the mineral development licence; and

(ii) a definition of the boundary of the area to be retained; and

Note—

Section 386R sets out the requirements for defining the boundary of the area of a proposed mining tenement.

(iii) if land, other than land in the area of the mineral development licence, is required to access the surface area of the land in the area to be retained—a definition of the boundary of the area of that land; and

(c) the fee prescribed under a regulation.

(4) A purported surrender of a mineral development licence or of any part of the area of a mineral development licence shall not be effective unless—

(a) the holder has complied with this section; and

(b) the Minister consents to the surrender;

and shall, except in the case of a surrender referred to in subsection (13), take effect on the day next following the Minister's consent.

(5) However, the Minister may give the consent only if the Minister is satisfied—

(a) the holder has complied with the condition to carry out improvement restoration for the mineral development licence; and

(b) the relevant environmental authority has been cancelled or surrendered under the Environmental Protection Act.

(6) If the Minister is not satisfied the holder has complied with the condition, the Minister may, by written notice, give the

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holder reasonable directions about carrying out improvement restoration for the mineral development licence.

(7) The holder must comply with the directions.

Maximum penalty—500 penalty units.

(8) If part of the area of a mineral development licence is surrendered under this section—

(a) the chief executive must record in the register the details of the surrender; and

(b) the licence continues in force for the part of the area not surrendered.

(9) Upon a surrender of a mineral development licence, all adjustments between the holder and the Crown in respect of the payment of rental, fees and other moneys shall be at the discretion of the Minister.

(10) Where any moneys are specified pursuant to subsection (9) as a debt due to the Crown, the Minister may direct that the security deposited in accordance with section 190 may be utilised for payment thereof.

(11) Any moneys specified pursuant to subsection (9) by the Minister to be payable or that part thereof not recovered under subsection (10) shall be a debt due by the person specified as liable to pay to the Crown.

(12) In an action under subsection (11) for recovery of a debt due to the Crown, the production of a certificate by the chief executive certifying the amount of that debt shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the debt and the amount thereof.

(13) Where, at the time when the holder of a mineral development licence purports to surrender the mineral development licence or a part of the area of the mineral development licence, the holder applies for a new mineral development licence for the whole or part of the area of the current mineral development licence the purported surrender shall take effect immediately prior to the grant of the new mineral development licence.

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211 Access and compensation provisions

The Common Provisions Act, chapter 3 contains provisions about access, compensation and related matters for mineral development licences.

214 Improvement restoration for mineral development licence

(1) This section applies on the termination of a mineral development licence, other than—

(a) by surrender under section 210; or

(b) for the granting of a new mineral development licence or mining lease over the area of the terminated licence.

(2) If the Minister is not satisfied the holder has satisfactorily complied with the condition to carry out improvement restoration for the mineral development licence, the Minister may, by written notice, give the holder reasonable directions about carrying out the restoration.

(3) The holder must comply with the directions.

Maximum penalty—500 penalty units.

(4) The holder and the holder's employees or agents may, to the extent reasonable and necessary to comply with the directions—

(a) enter land stated in the notice; and

(b) bring on to the land vehicles, vessels, machinery and equipment.

215 Rights and obligations extended upon application for mining lease

(1) The holder of a mineral development licence who, during the term of the licence makes application for the grant of a mining lease for any part of the area of the licence, shall, during the period from the expiration of the licence until the determination of the application, for so long as the provisions of this Act and the terms and conditions that would apply if

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the licence were current are complied with, have all the responsibilities, powers, authorities and duties that the holder would have had for the part of the area the subject of the application if the licence was current but during that period no rental shall be payable under this part for the part of the area the subject of the application.

(2) The entitlements of the holder of a mineral development licence are not reduced or limited by reason only of the holder's application for the grant of a mining lease for any part of the area of a mineral development licence.

216 Producing mineral development licence

(1) This section applies if—

(a) a person purports to enter or be on land under the authority of a mineral development licence; and

(b) the owner of the land, or an agent of the owner, asks the person for proof of the person's authority to enter or be on the land.

(2) The person must produce the mineral development licence, or a copy of the licence, to the owner or agent.

(3) If the person fails to comply with subsection (2), the person does not have any entitlements under this Act during the period of the person's noncompliance.

(4) This section does not prevent a person entering or being on land to deliver goods or substances or provide services related to the purpose for which a mineral development licence is granted to a person who is lawfully on the land under this chapter.

(5) In this section—

copy, of a mineral development licence, includes an extract from the register of the details of the licence recorded in the register.

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223 Chief executive may recommend action to ease concerns or other action

(1) If the chief executive considers a mineral development licence holder should take stated action to ease concerns of an owner of land or another mineral development licence holder, or should take some other action, the chief executive may recommend the action to the Minister.

(2) The Minister may give the mineral development licence holder the directions the Minister considers appropriate about the recommended action.

(3) A failure by the holder to comply with the Minister's directions is taken to be a breach of a condition of the mineral development licence.

(4) If the Minister gives a direction under subsection (2), the chief executive must give a copy to—

(a) if the recommended action under subsection (1) relates only to native title protection conditions under section 194AAA—any person identified in the conditions as a native title party; or

(b) if the recommended action under subsection (1) relates only partly to the native title protection conditions—

(i) any person identified in the conditions as a native title party; and

(ii) the owner of the land; or

(c) otherwise—the owner of the land.

(5) If the recommended action under subsection (1) is action to ease concerns of an owner of land or another mineral development licence holder, the chief executive must give the owner and the other mineral development licence holder written notice of—

(a) the substance of any recommendation made to the Minister under subsection (1) or, if the chief executive decides not to make a recommendation, the chief executive's decision; and

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(b) any other action the chief executive has taken to ease the concerns of the owner or mineral development licence holder.

224 Utilisation of security deposit towards subsequent mineral development licence or mining lease

Where the holder of a mineral development licence makes application for the grant of a subsequent mineral development licence or a mining lease, the Minister notwithstanding that the period of 6 months after the termination of that licence may not have elapsed may, instead of refunding the whole or part of the security deposited in respect of the current mineral development licence, retain that security or part thereof (together with any further security fixed by the Minister) as the security (in which case it shall be taken to be or to be part of the security) deposited by the applicant in respect of the subsequent mineral development licence or the mining lease.

225 Direction to apply for mining lease

(1) If, at any time during the currency of a mineral development licence, the Minister is of the opinion that actual mining operations should commence on any part of the area of the licence, the Minister shall give to the holder written notice directing the holder to indicate, within the time specified in the notice, why the holder should not apply for a mining lease for that purpose.

(2) If the holder of a mineral development licence to whom a notice under subsection (1) has been given does not, within the time specified in the notice, or such longer time as the Minister in writing may approve, reply to the notice, or the Minister, on considering the holder's reply, is not satisfied that the holder should not apply for a mining lease, the Minister may give the holder a further written notice directing the holder, within the time specified in the notice or such extended time as the Minister in writing may approve, to apply for such a mining lease.

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(3) If the holder to whom a notice under subsection (2) is given does not apply for a mining lease as directed within the specified time or such extended time, the Minister may in the Minister's discretion cancel the mineral development licence.

(4) Upon the cancellation of a mineral development licence pursuant to subsection (3) land in the area of the mineral development licence does not become part of the area of any current exploration permit.

(5) Any refund of moneys held in respect of a mineral development licence that is cancelled pursuant to subsection (3) (including any security deposited) shall be at the Minister's discretion.

226 Minister may determine availability of certain land

(1) Where in respect of any land—

(a) an application for a mineral development licence or for renewal thereof is rejected by the Minister; or

(b) a mineral development licence expires by effluxion of time and an application to renew the licence is not duly made; or

(c) a mineral development licence is cancelled pursuant to section 209 or 225; or

(d) a mineral development licence is surrendered or an application for the grant of a mineral development licence is abandoned in respect of land over which the holder of or the applicant for the grant does not hold an exploration permit that adjoins that land;

that land, shall not be available for any subsequent application for the grant of a mining tenement unless and until approved by the Minister.

(2) An approval of the Minister under subsection (1) may limit the type of application or grant that may be made in respect of the land specified in the approval and may stipulate the conditions under which applications therefor may be made.

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(3) An approval of the Minister under subsection (1) may provide that a subsequent application by an eligible person need not be by the holder of a prospecting permit, exploration permit or a mineral development licence.

(4) Notwithstanding subsection (1), where the applicant for a mineral development licence that is rejected is at the time of the rejection the holder of an exploration permit in respect of the same land, that land shall, upon the rejection, be subject to the exploration permit.

226AA Application to add excluded land to existing licence

(1) The holder of a mineral development licence (the ***existing licence***) may apply to the Minister to add excluded land to the existing licence.

(2) The provisions of this part apply, with necessary changes, to an application under subsection (1) as if it were an application under section 183.

(3) Without limiting subsection (2), in deciding the application, the Minister may—

(a) impose conditions under section 194(1)(l) in addition to any conditions that apply under the existing licence; and

(b) fix an amount of security to be deposited under section 190 in addition to any security for the existing licence.

(4) On the granting of the application, the excluded land is included in the existing licence.

(5) In this section—

excluded land means land that was the subject of a specific exclusion when the existing licence was granted or that was taken to be excluded under section 182.

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226A Reduction of area of mineral development licence on grant of mining lease

(1) This section applies if a mining lease is granted because of an application made by—

(a) the holder of a mineral development licence granted for the same area for the same mineral, whether or not at the Minister's direction; or

(b) an eligible person with the holder's consent.

(2) The area of the licence must be reduced by omitting the area of the mining lease.

(3) The terms of the licence may be varied as the Minister directs.

227 Discovery etc. of mineral does not vest property

A person who whilst acting under the authority of a mineral development licence discovers or takes any mineral does not thereby acquire property therein and shall not dispose of any such mineral except with the consent of the Minister whose consent may be subject to such terms and conditions as the Minister thinks fit (including conditions as to the payment of royalties).

228 Effect of termination of mineral development licence

(1) This section applies on the termination of a mineral development licence.

(2) However, this section does not apply to a mineral development licence if the termination is for granting a new mineral development licence or a mining lease over the area of the terminated licence to the holder of the terminated licence.

(3) On the termination of a mineral development licence, the ownership of machinery, equipment and removable improvements (***plant***) on the area of the terminated licence divests from the owner and vests in the State.

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(4) However, subsection (3) applies to plant only if the plant was brought on to the land under the terminated mineral development licence.

229 Application may be made for approval to remove plant

(1) This section applies to plant that vests in the State on the termination of a mineral development licence.

(2) Anyone who had an interest in the plant immediately before its ownership vested in the State may apply in writing to the Minister for permission to remove the plant from the land.

(3) The application—

(a) must be made within 20 business days after the plant vests in the State (or a longer period, of not more than 3 months, allowed by the Minister); and

(b) may be made even though a subsequent grant of a mining claim, exploration permit, mineral development licence or mining lease has been made over the land.

(4) The Minister may approve or refuse to approve the application.

(5) However, the Minister must approve the application if the Minister is satisfied—

(a) the person was entitled to the plant immediately before it vested in the State; and

(b) there is enough security held for the terminated mineral development licence to meet the costs for which it was deposited.

Note—

For the provision of security, see section 190.

(6) An approval may be given on conditions stated in it.

(7) If the application is approved, the person named in the approval may enter the land and remove the plant (other than any covers, fencing, casings, linings, timbering or other things

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securing the safety of the land) stated in the application before the time stated in the approval ends.

(8) Anything lawfully removed under subsection (7) divests from the State and vests in the person entitled to it immediately before the termination of the mineral development licence.

(9) In this section, ***plant*** has the meaning given in section 228(3).

230 Plant remaining on former mineral development licence may be sold etc.

(1) This section applies if the chief executive has not received, or has received but not granted, an application for approval to remove plant from the site of a terminated mineral development licence within 3 months after the licence's termination.

(2) The Minister may direct the chief executive to—

(a) sell the plant by public auction or in another stated way; or

(b) if the plant has no commercial value—dispose of or destroy it.

(3) Proceeds of a sale are to be applied in the following order towards—

(a) the reasonable expenses incurred in the sale;

(b) the cost of rectifying actual damage for which an amount of security deposited for the terminated mineral development licence could have been used but was not used, or was inadequate;

(c) costs and expenses mentioned in the Environmental Protection Act, section 316C;

(d) amounts owing to the State under this Act by the former holder;

(e) any other amounts owing to the State under the Environmental Protection Act for a relevant environmental authority;

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(f) amounts owing to a mortgagee under a mortgage registered under the Common Provisions Act over the mineral development licence.

(4) Any balance must be paid to the former holder.

(5) If the chief executive can not decide the identity of, or locate, a person entitled to the proceeds or part of the proceeds, the chief executive may pay the amount to the public trustee as unclaimed moneys.

(5A) A secured party can not enforce any security interest in the proceeds of sale against an entity to whom an amount is payable under subsection (3)(a) to (e).

(6) Compensation is not payable for a sale, disposal or destruction under this section.

(7) In this section—

plant has the meaning given in section 228(3).

PPS Act means the *Personal Property Securities Act 2009* (Cwlth).

secured party has the meaning given by the PPS Act, section 10.

security interest has the meaning given by the PPS Act, section 12.

231 Variation of access to mineral development licence area

(1) The holder of a mineral development licence may apply to the chief executive in the approved form for a variation of the land used or proposed to be used as access in relation to the area of the mineral development licence.

(2) An application for a variation of the land used or to be used as access under this section shall be accompanied by—

(a) such particulars as are, under section 183, required to accompany an application for the grant of a mineral development licence in so far as those particulars relate to the land used or proposed to be used as access in

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relation to the area of the mineral development licence; and

(b) the prescribed application fee.

(3) The Minister may grant or reject an application under this section.

(4) Without limiting subsection (3), the Minister may reject the application if the Minister considers the variation is not in the public interest.

(5) If the Minister grants the application, the Minister may impose conditions on the variation.

(6) Without limiting subsection (5), the Minister may impose a condition on the variation if the Minister considers the condition is in the public interest.

(7) Upon the grant of an application under this section the variation shall thereupon become effective.

(8) If an application under this section is rejected, the Minister shall cause the applicant to be advised of the reasons for the rejection.

(9) Within 15 business days (or such longer period as the Minister shall in the particular case allow) of the Minister granting an application under this section, the holder of the mineral development licence shall give notice in the approved form to the owner of land directly affected by the variation.

231AA Activity report for mineral development licence

A regulation may—

(a) require a holder of a mineral development licence to give the Minister a report (an ***activity report***) about the activities carried out under the licence; and

(b) prescribe the following for the activity report—

(i) when the report is to be given;

(ii) the information to be contained in the report.

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231AB Partial surrender report for mineral development licence

A regulation may—

(a) require a holder of a mineral development licence to give the Minister a report (a ***partial surrender report***) about a reduction in the area of the licence; and

(b) prescribe the following for the partial surrender report—

(i) when the report is to be given;

(ii) the information to be contained in the report.

231AC Final report for mineral development licence

A regulation may—

(a) require a holder of a mineral development licence to give the Minister a report (a ***final report***) summarising the results of activities carried out under the licence during the whole of its term; and

(b) prescribe the following for the final report—

(i) when the report is to be given;

(ii) the information to be contained in the report.

Part 2 Mineral development licence for Aurukun project

231A Application of pts 1 and 2

(1) This part applies only for the granting of, and in relation to, a mineral development licence for an Aurukun project.

(2) Part 1, except to the extent mentioned in subsection (3), also applies for the granting of, and in relation to, a mineral development licence for an Aurukun project.

(3) Sections 179, 180, 181(2), 182, 183, 185, 186, 189, 192, 194, 197A, 208, 210, 214(1)(a), 225 and 226AA do not apply for

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the granting of, and in relation to, a mineral development licence for an Aurukun project.

(4) Also, a reference in a provision of part 1 to a provision that has been disapplied under subsection (3) is to be disregarded.

231B Only eligible person can apply for and hold mineral development licence (180)

(1) A mineral development licence under this part can only be applied for and held by an eligible person.

(2) The application and grant of a licence may be made even if the land for the relevant Aurukun project is part of a restricted area.

Note—

The numbers bracketed in the headings to this and other sections of this part are references to corresponding sections in part 1.

(3) Despite subsection (1), a mineral development licence granted under this part may be cancelled under section 231J even though the holder has ceased to be an eligible person.

231C Application for mineral development licence (183)

The application for the grant of a mineral development licence must—

(a) be in the approved form; and

(b) define the boundary of the area of the proposed mineral development licence; and

Note—

Section 386R sets out the requirements for defining the boundary of the area of a proposed mining tenement.

(c) define the boundary of any area of land outside the area of the proposed mineral development licence intended to be used to access the surface area of the land proposed to be included in the proposed licence area; and

(d) be lodged with the chief executive; and

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(e) be accompanied by—

(i) a statement, acceptable to the Minister, stating the activities, if any, proposed to be conducted under the licence, including, for example, work programs, amounts to be spent and studies to be performed; and

(ii) a statement, acceptable to the Minister, separate from the statement mentioned in subparagraph (i), detailing the applicant's financial and technical resources; and

(iii) the application fee prescribed under a regulation.

231E Minister may grant or reject application for mineral development licence (186)

(1) If the Minister is satisfied the applicant has complied with this Act in relation to the application, the Minister may grant the applicant a mineral development licence over all or part of the land for which the application is made.

(2) Alternatively, the Minister may reject the application.

(3) Without limiting subsection (2), the Minister may reject the application if the Minister considers the mineral development licence is not in the public interest.

(4) If the Minister rejects the application, in whole or in part, the Minister must, as soon as practicable after making the decision, give the applicant written notice of the reasons for the decision.

(5) If the Minister grants the licence for part only of the land applied for, the application in so far as it relates to the balance of that land is taken to be rejected.

(6) The Minister may decide a condition to which the licence is subject if the Minister considers the condition is in the public interest.

(7) The chief executive must record in the register the following details of the licence—

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(a) the identification number of the licence;

(b) the name of the holder;

(c) the address for service of notices on the holder;

(d) the description of land for which the licence is granted;

(e) the term and date of commencement of the licence;

(f) the conditions, other than conditions prescribed under this Act, to which the licence is subject;

(g) the minerals the subject of the licence.

231F Initial term of mineral development licence (192)

(1) The initial term of a mineral development licence is for a period of not more than 5 years starting on the first day of the month next following the day the licence is granted.

(2) From the grant of the licence to the start of the initial term, the holder has all the entitlements, powers, duties and functions the holder has during the term of the licence.

(3) Despite section 193, no rent is payable for the period before the initial term starts.

231G Conditions of mineral development licence (194)

(1) A mineral development licence is subject to—

(a) a condition that the holder must—

(i) comply with the mandatory provisions of the land access code to the extent it applies to the holder; and

(ii) ensure any other person carrying out an authorised activity for the mineral development licence complies with the mandatory provisions of the land access code; and

(b) if the holder uses land outside the boundary of the area of the mineral development licence for access to the area of the mineral development licence, a condition that the

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holder may use the land only for the following purposes—

(i) to transport, by road across the surface of the land, something that is reasonably necessary to allow the holder to carry out an authorised activity for the mineral development licence;

(ii) to transport, by road across the surface of the land, any minerals mined under the authority of a mining tenement held by the holder;

(iii) to construct road transport infrastructure across the surface of the land that is reasonably necessary for the purpose of transporting a thing or mineral mentioned in subparagraph (i) or (ii); and

(c) a condition that the holder must carry out the activities, if any, for which the licence was granted and in accordance with this Act and the conditions of the licence and for no other purpose; and

(d) a condition that the holder must carry out improvement restoration for the licence; and

(e) a condition that the holder, before the licence ends for whatever cause, must remove all equipment and plant on or in the area of the licence unless otherwise authorised in writing by the Minister; and

(f) a condition that without the prior approval in writing of the Minister the holder must not obstruct or interfere with any right of access had at any time during the term of the licence by any person in relation to the area of the licence for so long as that right of access is exercised; and

(g) a condition that the holder is not to transfer or mortgage the licence, or any part of it, unless the Minister is satisfied that any approval or consent required under the relevant Aurukun agreement has been given; and

(h) a condition that the holder must, when the Minister requires, give to the Minister—

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(i) progress and final reports, accompanied by maps, sections, charts and other data giving full particulars and results of activities carried out on the area stated by the Minister, including details of costs incurred for stated periods within the term of the licence; and

(ii) materials obtained because of the holder's activities under the licence; and

(i) a condition that the holder—

(i) pays the rental prescribed under a regulation; and

(ii) deposit, as required by the Minister, any security from time to time under this Act; and

(j) a condition that the holder must comply with this Act, other mining legislation and the At Risk agreement; and

(k) any other conditions stated in the relevant Aurukun agreement to be conditions of the licence; and

(l) any other conditions decided by the Minister.

(2) Without limiting subsection (1), the Minister may decide a condition of the licence if the Minister considers the condition is in the public interest.

(3) The Minister may, from time to time and with the agreement of the holder, vary any condition imposed by the Minister.

(4) Without limiting subsection (3), the Minister may decide not to make a variation of the condition proposed by the holder if the Minister considers the variation is not in the public interest.

(5) The holder of the licence and all persons acting under the authority of the licence must comply with the conditions for the time being of the licence.

(6) Conditions requiring compliance with stated codes or industry agreements may be imposed on the licence.

(7) Despite subsections (1) to (4) and (6), a condition must not be imposed or varied if the condition, or the condition as varied,

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is the same, or substantially the same, or inconsistent with, a relevant environmental condition for the licence.

231H Renewal of licence (197A)

(1) The Minister may renew a mineral development licence if the Minister is satisfied of each of the following—

(a) the relevant Aurukun agreement has not been terminated;

(b) the holder of the licence has complied with—

(i) the licence; and

(ii) this Act in relation to the licence;

(c) the activities proposed to be undertaken during the renewed term are appropriate;

(d) the financial and technical resources available to the holder to carry out the proposed activities during the renewed term are appropriate.

(2) The renewal may be granted for a further term of not more than 5 years decided by the Minister.

(3) The renewed licence is subject to any conditions applying at the end of the earlier term of the licence and to any other conditions decided by the Minister.

(4) Without limiting subsection (3), the Minister may decide a condition to which the licence is subject if the Minister considers the condition is in the public interest.

(5) The Minister may refuse to renew the licence if the Minister—

(a) has served on the holder a notice, in the approved form, asking the holder to show cause, within the period stated in the notice, why the renewal should not be refused; and

(b) after considering the holder's response, is satisfied the renewal should be refused.

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(6) Without limiting subsection (1) or (5), the Minister may refuse the renewal if the Minister considers the renewal is not in the public interest.

(7) As soon as practicable after deciding the application for the renewal, the Minister must give the holder a written notice stating—

(a) the decision; and

(b) if the decision is to refuse the renewal, the reasons for the decision.

231I Requirements for transferring or mortgaging mineral development licences

(1) Subsection (2) applies to restrict a transfer or mortgage of a mineral development licence in addition to any requirements under the Common Provisions Act.

(2) A mineral development licence, or an interest in a mineral development licence, can not be transferred or mortgaged unless the Minister is satisfied that any approval or consent required under the relevant Aurukun agreement for the transfer or mortgage has been given.

231J Contravention by holder of mineral development licence (209)

In addition to section 209, if the relevant Aurukun agreement has been terminated, the Minister may cancel the licence.

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Chapter 6 Mining leases

Part 1 Mining leases generally

232 Eligible person may apply for mining lease

(1) An eligible person (an ***applicant***) may apply for a mining lease for 1 or more minerals over an area of contiguous land (the ***proposed lease area***).

Notes—

1 See section 245 for the requirements for making an application.

2 See sections 248 and 249 for the requirements for an applicant to obtain the consent or views of the holder of, or an earlier applicant for, an exploration permit, mineral development licence or mining lease over the same land.

(2) However, if the application is for a coal mining lease—

(a) the proposed lease area must be in the area of any of the following (each a ***resource authority***)—

(i) a prospecting permit;

(ii) an exploration permit for coal;

(iii) a mineral development licence; and

(b) the applicant must—

(i) be the holder of the resource authority; or

(ii) have the consent of the holder of the resource authority to apply for the coal mining lease.

233 Only eligible persons to hold mining leases

A mining lease shall not be held by a person who is not an eligible person.

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234 Minister may grant mining lease

(1) The Minister may grant to an eligible person or persons, a mining lease for all or any of the following purposes—

(a) to mine the mineral or minerals specified in the lease and for all purposes necessary to effectually carry on that mining;

(b) such purposes, other than mining, as are specified in the mining lease and that are associated with, arising from or promoting the activity of mining.

(2) However, coal seam gas can not be specified in a mining lease.

Note—

For the entitlement of a coal mining lease holder or an oil shale mining lease holder to mine coal seam gas, see section 318CM.

(3) Also, the Minister must not grant a mining lease for land in a fossicking area, or for land that includes the whole or part of a fossicking area, unless the application—

(a) was made, but not decided, before the land became a fossicking area; or

(b) is for land in a prospecting permit, exploration permit or mineral development licence.

235 General entitlements of holder of mining lease

(1) Subject to section 236 and chapter 8, part 8, division 1, during the currency of a mining lease, the holder of the mining lease and any person who acts as agent or employee of the holder (or who delivers goods or substances or provides services to the holder) for a purpose or right for which the mining lease is granted—

(a) may enter and be—

(i) within the area of the mining lease; and

(ii) upon the surface area comprised in the mining lease;

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for any purpose for which the mining lease is granted or for any purpose permitted or required under the lease or by this Act;

(b) may do all such things as are permitted or required under the lease or by this Act, including plugging and abandoning, or otherwise remediating, a legacy borehole and rehabilitating the surrounding area in compliance with the requirements prescribed under a regulation.

(2) During the currency of the mining lease, the rights of the holder relate, and are taken to have always related, to the whole of the land and surface area mentioned in subsection (1).

236 Entitlement to use sand, gravel and rock

(1) Subject to compliance with any conditions specified in the mining lease and payment of the prescribed royalty to the person having the property in any sand, gravel or rock the holder of the mining lease may utilise, upon the area of the mining lease and for any purpose permitted under the mining lease, sand, gravel and rock occurring in or on the area of the mining lease except to the extent that an authority granted under any other Act prior to the grant of the mining lease or, with the consent of the holder of the mining lease, after the grant of the mining lease for the use or disposal applies thereto.

(2) A provision in any other Act, other than the Environmental Protection Act, that, but for this subsection, would require a person acting pursuant to subsection (1) to obtain a licence or other authority thereunder to so act or would prohibit that person from so acting unless the person held such a licence or authority does not apply to that person.

(3) For the purposes of chapter 11, sand, gravel and rock utilised by the holder of a mining lease pursuant to this section shall be deemed to be mineral mined by the holder.

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237 Drilling and other activities on land not included in surface area

(1) A mining lease holder may, in the approved form, apply to the Minister for approval to conduct drilling and other activities on land not included in the surface area covered under the lease.

(2) The application—

(a) must be lodged with the chief executive; and

(b) must describe—

(i) the activities proposed to be carried out on the land under the mining lease; and

(ii) the area over which the activities are to be carried out on the land; and

(c) must state how long the activities are to be carried out; and

(d) must be accompanied by—

(i) the written consent of the owner of the land; and

(ii) if there is an agreement between the holder and the owner about the compensation payable to the owner for the activities—a copy of the agreement; and

(iii) the fee prescribed under a regulation.

(3) The Minister may approve or refuse to approve the application.

(4) An approval may be given on conditions stated in it, including conditions about, for example, depositing security and complying with stated codes.

(5) If an approval is given—

(a) the mining lease must be amended to give effect to the approval and the conditions stated in it; and

(b) the chief executive must record in the register the details of the approval.

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238 Mining lease over surface of restricted land

(1) A mining lease may be granted over the surface of land that was restricted land when the application for the lease was lodged only if—

(a) each relevant owner for the restricted land consents in writing to the application; and

(b) the applicant lodges each relevant owner's consent with the chief executive.

(2) A relevant owner for restricted land can not withdraw a consent under subsection (1) once it has been lodged with the chief executive.

(3) In this section—

relevant owner, for restricted land, has the meaning given under the Common Provisions Act, section 69.

239 Restriction on mining leases if land is released from exploration permit)

(1) This section applies if an area of land is released from an exploration permit.

(2) However, this section applies only for the period—

(a) starting when the land is released; and

(b) ending 2 months after the end of the month in which the land is released.

(3) A person can not apply for, hold or have an interest (direct or indirect) in, 1 or more mining leases over the released land if the total area of the mining leases is more than 300ha.

(4) In this section—

released, for land the subject of an exploration permit, means the land stops being the subject of the permit.

245 Application for grant of mining lease

(1) An application for the grant of a mining lease must—

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(a) be in the approved form; and

(b) state the name of each applicant; and

(c) state the name and address for service of 1 person upon whom any notice may be served on behalf of the applicant or the applicants; and

(d) describe all parcels of land the whole or part of which are in or adjoin the proposed lease area; and

(e) state the current use of the land in the proposed lease area and whether it is subject to erosion control works; and

(f) state the names and addresses of the owners of—

(i) the land in the proposed lease area; and

(ii) any land that is to be used to access the land mentioned in subparagraph (i); and

(g) define the boundary of the proposed lease area; and

Note—

Section 386R sets out the requirements for defining the boundary of the area of a proposed mining tenement.

(h) define the boundary of each of the following—

(i) any surface area of land to be included in the proposed lease area;

(ii) any restricted land for the proposed mining lease;

(iii) any land outside the boundary of the proposed lease area intended to be used to access the proposed lease area; and

(i) for land mentioned in paragraph (h)(i)—state the purpose for which the land is intended to be used; and

(j) be accompanied by a visual representation of the boundaries and land mentioned in paragraphs (g) and (h); and

(k) give reasons why the mining lease should be granted in respect of the area and shape of the proposed lease area; and

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(l) identify the mineral or minerals or purpose for which the grant of the proposed mining lease is sought; and

(m) nominate the term of the proposed mining lease and give reasons for the length of term sought; and

(n) be accompanied by a statement, acceptable to the chief executive—

(i) outlining the mining program proposed, its method of operation, and providing an indication of when operations are expected to start or, if a mining program is not proposed, outlining the use proposed for the proposed lease area and providing an indication of when the proposed use is to start; and

(ii) of proposals for infrastructure requirements necessary to enable the mining program to proceed, or additional activities to be carried on to work out the infrastructure requirements; and

(iii) stating the estimated human, technical and financial resources proposed to be committed to authorised activities for the proposed mining lease during the term of the lease, if granted; and

(o) be accompanied by a statement, acceptable to the chief executive and separate from the statement mentioned in paragraph (n), detailing the applicant's financial and technical resources; and

(p) be accompanied by—

(i) proof, to the chief executive's satisfaction, of each applicant's identity; and

(ii) the number of additional copies of the application, and other documents lodged with the application, the chief executive requires; and

(iii) the application fee prescribed by regulation; and

(q) be lodged.

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(2) However, subsection (1)(n)(i) does not apply if, under chapter 8, the application includes a proposed development plan that complies with the initial development plan requirements.

(3) The chief executive must not accept a mining program mentioned in subsection (1)(n)(i) that is inconsistent with the provisions of this Act.

248 Applicant must obtain consent or views of existing authority holders

(1) This section applies if a person applies for a mining lease over land in the area of an existing exploration permit, mineral development licence or mining lease (the ***existing authority***) held by someone else.

(2) The applicant must obtain the existing authority holder's written consent to the application if the lease applied for is for the area of, or land within the area of, the existing authority and for—

(a) the same minerals as the existing authority; or

(b) a specific purpose mining lease.

(3) The applicant must obtain the existing authority holder's written views on the application if the lease applied for is for different minerals to those covered by the existing authority.

(4) If the existing authority holder's consent required under subsection (2) is not lodged with the chief executive before the last objection day for the application ends, the application can not be granted.

(5) If the existing authority holder's views required under subsection (3) are not lodged with the chief executive before the last objection day for the application ends, the applicant must lodge with the chief executive before the last objection day ends a statutory declaration stating why the applicant can not obtain the views.

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249 Later applicant must obtain consent or views of earlier applicant if same land affected

(1) This section applies if—

(a) a person (the ***earlier applicant***) makes an application to the chief executive for an exploration permit, mineral development licence or mining lease over land; and

(b) someone else (the ***later applicant***) makes a later application to the chief executive for a mining lease for any land applied for in the earlier application.

(2) The later applicant must obtain the earlier applicant's written consent to the later application if the lease applied for in the later application is over land applied for in the earlier application and for—

(a) the same minerals as the earlier application; or

(b) a specific purpose mining lease.

(3) The written consent may be lodged with the chief executive before—

(a) if the earlier application is decided by the grant of the permit, licence or lease applied for—20 business days after the permit, licence or lease is granted; or

(b) otherwise—the earlier application is decided.

(4) The later applicant must, within the request period, give the earlier applicant a written request seeking the earlier applicant's views if—

(a) the earlier application is for a mining tenement mentioned in subsection (1)(a); and

(b) the lease applied for in the later application is—

(i) over land applied for in the earlier application; and

(ii) for different minerals to those covered by the earlier application.

(5) The written request must—

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(a) state that the earlier applicant may, within the response period, lodge written views on the later application with the chief executive; and

(b) include a copy of the later application, other than any part of the application detailing the later applicant's financial and technical resources.

(6) A later applicant to whom subsection (4) applies must lodge with the chief executive notice of the day the later applicant complied with the obligation under subsection (4).

(7) An earlier applicant given a written request under subsection (4) may, within the response period, lodge the earlier applicant's written views with the chief executive.

(8) The chief executive must not deal with the later application until—

(a) for a later application to which subsection (2) applies—the earlier applicant's consent is lodged with the chief executive; or

(b) for a later application to which subsection (4) applies—

(i) the earlier applicant's views are lodged with the chief executive; or

(ii) the end of the response period; or

(c) for any other later application—the day the earlier application is finally decided.

(9) In this section—

request period means a period of 10 business days starting on the day the later application is lodged.

response period means a period of 20 business days starting on the day the earlier applicant is given a notice under subsection (4).

250 Rejection of application by chief executive

(1) A person who lodges an application for the grant of a mining lease shall provide the chief executive with such information

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and particulars relating to the requirements set out in section 245(1) on behalf of the applicant as the chief executive requires and on failure to provide that information the chief executive may reject the application.

(2) The chief executive may reject an application for a mining lease for all or part of land that appears, on evidence available to the chief executive, to be in the area of a mining claim, mineral development licence (other than the licence held by the applicant) or mining lease, or an application for the grant of a mining claim, mineral development licence or mining lease.

(3) For the purposes of subsection (2) where a mining claim, mineral development licence or mining lease is terminated or an application for a mining claim, mineral development licence or mining lease is abandoned or rejected, the relevant area or land shall be deemed to continue to be subject to the mining claim, mineral development licence or mining lease, or application until the day next following that termination, abandonment or rejection.

(4) A person whose application for the grant of a mining lease is rejected by the chief executive pursuant to subsection (1) or (2) may appeal against the rejection to the Land Court by lodging a written notice of appeal with the registrar of the Land Court within 20 business days of the rejection.

(5) The Land Court shall hear and determine the appeal and its determination thereon shall be final.

(6) At a hearing pursuant to this subsection the Land Court shall take such evidence, shall hear such persons and inform itself in such manner as it considers appropriate in order to determine the appeal and shall not be bound by any rule or practice as to evidence.

(7) If the Land Court does not confirm the rejection by the chief executive the Land Court shall direct the chief executive to proceed with the application and the chief executive shall do all things necessary to implement that decision.

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251 Priority of mining lease applications

(1) Applications made under this Act for the grant of mining leases for the same land must be considered and decided according to the day on which they are lodged.

(2) If 2 or more applications are lodged on the same day—

(a) they take the priority the Minister decides, after considering the relative merits of each application; and

(b) the chief executive must give each applicant a written notice stating there is competition for priority between the applicant's application and another application, or other applications, lodged on the same day as the day on which the applicant's application was lodged.

252 Issue of mining lease notice

(1) This section applies if the chief executive is satisfied the applicant for the grant of a mining lease—

(a) is eligible to apply for the mining lease; and

(b) has complied with the requirements of this Act for the application.

(2) The chief executive must give the applicant a written notice for the application (the ***mining lease notice***).

(3) The mining lease notice must state the following—

(a) the number of the proposed mining lease;

(b) the date and time the application was lodged;

(c) any documents or other information, in addition to the documents mentioned in section 252A(1)(a) and (b), the applicant must give to each affected person within the meaning of section 252A;

(d) where the application and any additional documents given to the chief executive about the application may be inspected or accessed;

(e) the last day (the last objection day) for lodging objections to the application.

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(4) The last objection day must be at least 20 business days after the notice is given to the applicant.

252A Giving and publication of mining lease notice and other information

(1) The applicant for a proposed mining lease must give the following documents and information to each affected person—

(a) a copy of the mining lease notice;

(b) a copy of the application for the mining lease, other than any part of it—

(i) that states the applicant's financial and technical resources; or

(ii) the chief executive considers is commercial in confidence;

(c) the documents and other information stated under section 252(3)(c) in the mining lease notice.

(2) The documents and other information mentioned in subsection (1) must be given within 5 business days after the mining lease notice is given to the applicant.

(3) The applicant for a proposed mining lease must, in an approved newspaper circulating generally in the area of the subject land, publish—

(a) a copy of the mining lease notice; or

(b) if a map or sketch plan is to be included in the publication—

(i) a notice in the approved form about the mining lease notice; and

(ii) the map or sketch plan.

(4) The publication must take place at least 15 business days before the last objection day.

(5) The chief executive may decide an additional or substituted way, or a longer or shorter period, for the giving of the

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documents and other information mentioned in subsection (1) or the publication of the documents mentioned in subsection (3).

(6) If the chief executive makes a decision under subsection (5)—

(a) the chief executive must give the applicant written notice of the decision no later than the giving of the mining lease notice to the applicant; and

(b) the applicant must comply with the decision instead of subsections (2) to (4).

(7) In this section—

***adjoining land*—**

(a) means private land that adjoins—

(i) subject land; or

(ii) a lot, within the meaning of the *Land Act 1994* or the *Land Title Act 1994* that contains any part of subject land; and

(b) includes land that would adjoin land mentioned in paragraph (a)(i) or (ii) if it were not separated by a road, watercourse, railway, stock route, reserve or drainage or other easement; and

(c) does not include land only because it adjoins land necessary for—

(i) access to subject land; or

(ii) transporting things to subject land.

affected person means—

(a) an owner of the subject land; or

(b) an owner of land necessary for access to the subject land; or

(c) an owner of adjoining land; or

(d) the relevant local government; or

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(e) an entity that provides infrastructure wholly or partially on the subject land.

approved newspaper means a newspaper approved by the chief executive.

infrastructure means infrastructure relating to the transportation, movement, transmission or flow of anything, including, for example, goods, material, substances, matter, particles with or without charge, light, energy, information and anything generated or produced.

subject land means land the subject of the proposed mining lease.

252B Declaration of compliance with obligations

(1) The applicant for a proposed mining lease must give the chief executive a statutory declaration that the applicant has complied with section 252A.

(2) The declaration must be given within the later of the following periods to end—

(a) 5 business days after the last objection day for the application for the mining lease;

(b) if the chief executive at any time decides a longer period—the longer period.

(3) If the chief executive considers the declaration given under subsection (2) may not identify each person to whom a document, information or notice must be given under section 252A, the chief executive may require the applicant to give the chief executive another declaration under subsection (1) within the period decided by the chief executive.

(4) Until a declaration mentioned in subsection (2) or (3) is given—

(a) the Land Court must not make a final recommendation to the Minister about the application for the mining

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lease, other than a recommendation to reject the application; and

(b) the Land Court may refuse to hear any matter about the application.

252C Continuing obligation to notify

(1) This section applies for an application for a mining lease if, after the day the mining lease notice has been given to the applicant but before the hearing day for the application, the applicant gives the chief executive an additional document about the application.

(2) The applicant must give a copy of the document to each affected person within the meaning of section 252A.

253 Reissue of mining lease notice

(1) The chief executive may reissue a mining lease notice if the chief executive is satisfied it should be reissued—

(a) because of an error in its preparation; or

(b) because compliance with the notice is impracticable.

(2) If the chief executive reissues a mining lease notice, the chief executive may extend the last date for objections to take account of the time between the issue of the original notice and its reissue.

260 Objection to application for grant of mining lease

(1) An entity may, on or before the last objection day for the application, lodge with the chief executive an objection in writing in the approved form.

(2) An owner of land who attends a conference with the applicant for the grant of a mining lease may lodge an objection on or before the expiration of 5 business days after the conclusion of that conference or if the applicant for the grant of the mining lease fails to attend the conference after the day upon

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which the conference was convened, notwithstanding that the period for objection prescribed by subsection (1) has expired.

(3) An objection referred to in subsection (1) or (2) shall state the grounds of objection and the facts and circumstances relied on by the objector in support of those grounds.

(4) Each objector to an application for the grant of a mining lease shall serve upon the applicant on or before the last date that the objector may lodge an objection to that application a copy of the objection lodged by the objector.

261 Objection may be withdrawn

(1) An objection to an application for a mining lease may be withdrawn by the objector giving written notice of the withdrawal to—

(a) the chief executive; and

(b) if the objection has been referred to the Land Court under section 265—

(i) the Land Court; and

(ii) the applicant.

(2) A withdrawal of an objection can not be revoked.

265 Referral of application and objections to Land Court

(1) Subsections (2) and (3) apply if—

(a) a properly made objection is made for an application for a mining lease; and

(b) the application for the mining lease relates to an application under the Environmental Protection Act, section 125 for an environmental authority for a mining activity relating to a mining lease; and

(c) either—

(i) an objection notice relating to the application for the environmental authority is given under the

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Environmental Protection Act, section 182(2) to the EPA administering authority; or

(ii) the applicant for the environmental authority has requested, under the Environmental Protection Act, section 183(1), that the application for the environmental authority be referred to the Land Court.

(2) The chief executive must refer the following to the Land Court for hearing—

(a) the application for the mining lease;

(b) all properly made objections for the application for the mining lease;

(c) all objection notices, relating to the application for the environmental authority, given under the Environmental Protection Act, section 182(2);

(d) if the applicant for the environmental authority has requested the EPA administering authority to refer the application to the Land Court under the Environmental Protection Act, section 183—a copy of the request.

(3) The chief executive must make the referral within 10 business days after the latest of the following—

(a) the last objection day for the application for the mining lease;

(b) if an owner of land may lodge an objection under section 260(2)—the last day of the period for lodging an objection under that subsection;

(c) the last day on which the application for the environmental authority may be referred to the Land Court under the Environmental Protection Act, section 185(2).

(4) Subsections (5) and (6) apply if—

(a) a properly made objection is made for an application for a mining lease; and

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(b) the application for the mining lease does not relate to an application under the Environmental Protection Act, section 125 for an environmental authority for a mining activity relating to a mining lease.

(5) The chief executive must refer the application for the mining lease, and all properly made objections for the application, to the Land Court for hearing.

(6) The chief executive must make the referral within 10 business days after the later of the following—

(a) the last objection day for the application for the mining lease;

(b) if an owner of land may lodge an objection under section 260(2)—the last day of the period for lodging an objection under that subsection.

(7) If the Land Court receives a referral under subsection (2) or (5), the Land Court must fix a date for the hearing and immediately give written notice of the date to each of the following—

(a) the chief executive;

(b) the applicant for the mining lease;

(c) a person who has lodged a properly made objection for the application for the mining lease;

(d) a person who has given to the EPA administering authority, under the Environmental Protection Act, section 182(2), an objection notice relating to the application for the environmental authority.

(8) The hearing date must be at least 20 business days after the last objection day for the application for the mining lease.

(9) The Land Court may make an order or direction that a hearing under section 268 for an application for the grant of a mining lease and any objections to the grant happen at the same time as an objections decision hearing under the Environmental Protection Act, section 188 relating to the application for the mining lease.

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(10) If all properly made objections referred to the Land Court under subsection (2) or (5) are withdrawn under section 261 or struck out under section 267A before the Land Court forwards its recommendation to the Minister under section 269, the Land Court may remit the matter to the chief executive.

(11) In this section—

properly made objection means an objection lodged under section 260 that has not been withdrawn.

266 Chief executive may recommend rejection of application for noncompliance

If, at any time after a mining lease notice is given for a mining lease, the chief executive is of the opinion that an applicant for the grant of the mining lease has not complied with any requirement placed upon the applicant by or under this Act in respect of the application, the chief executive may recommend to the Minister that the application be rejected.

267 Minister may reject application at any time

The Minister, whether or not the chief executive has so recommended, may at any time reject an application for the grant of a mining lease notwithstanding that the application has not been the subject of a hearing by the Land Court if—

(a) the Minister is satisfied that the applicant has not complied with any requirement placed upon the applicant by or under this Act in respect of the application; or

(b) the Minister considers that it is not in the public interest for the mining lease to be granted.

267A Striking out objections

(1) This section applies to the extent an objection lodged under section 260 is—

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(a) outside the jurisdiction of the Land Court; or

(b) frivolous or vexatious; or

(c) otherwise an abuse of the process of the Land Court.

(2) Despite sections 265 and 268, the Land Court may, at any stage of the hearing, strike out all or part of the objection.

268 Hearing of application for grant of mining lease

(1) On the date fixed for the hearing of the application for the grant of the mining lease and objections thereto, the Land Court shall hear the application and objections thereto and all other matters that pursuant to this part are to be heard, considered or determined by the Land Court in respect of that application at the one hearing of the Land Court.

(2) At a hearing pursuant to subsection (1) the Land Court shall take such evidence, shall hear such persons and inform itself in such manner as it considers appropriate in order to determine the relative merits of the application, objections and other matters and shall not be bound by any rule or practice as to evidence.

(3) The Land Court shall not entertain an objection to an application or any ground thereof or any evidence in relation to any ground if the objection or ground is not contained in an objection that has been duly lodged in respect of the application.

(4) The Land Court may direct an inspection or view of the land the subject of the application.

(5) Nothing in subsection (1) shall prevent the adjournment from time to time of a hearing.

(6) Nothing in subsection (1) shall prevent the question of compensation being determined by the Land Court pursuant to section 279.

(7) The Minister may require at any time the Land Court to advise the reasons why a hearing under this section has not been finalised.

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(8) The Land Court on the application of an objector or owner may award costs against an applicant for a mining lease who abandons the application or does not pursue the application at a hearing.

(9) The Land Court on the application of an applicant for a mining lease may award costs against an objector who withdraws the objection or does not pursue the objection at a hearing.

(10) In this section—

application includes any additional document about the application given by the applicant to the chief executive.

269 Land Court's recommendation on hearing

(1) Upon the hearing by the Land Court under this part of all matters in respect of an application for the grant of a mining lease, the Land Court shall forward to the Minister—

(a) any objections lodged in relation thereto; and

(b) the Land Court's recommendation.

Note—

For other relevant provisions about forwarding documents, see section 386O.

(2) For subsection (1)(b), the Land Court's recommendation must consist of—

(a) a recommendation to the Minister that the application be granted or rejected in whole or in part; and

(b) if the application relates to land that is the surface of a reserve and the owner of the reserve has not consented to the grant of a mining lease over the surface area, the following—

(i) a recommendation to the Minister as to whether the Governor in Council should consent to the grant over the surface area;

(ii) any conditions to which the mining lease should be subject.

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(3) A recommendation may include a recommendation that the mining lease be granted subject to such conditions as the Land Court considers appropriate, including a condition that mining shall not be carried on above a specified depth below specified surface area of the land.

(4) The Land Court, when making a recommendation to the Minister that an application for a mining lease be granted in whole or in part, shall take into account and consider whether—

(a) the provisions of this Act have been complied with; and

(b) the area of land applied for is mineralised or the other purposes for which the lease is sought are appropriate; and

(c) if the land applied for is mineralised, there will be an acceptable level of development and utilisation of the mineral resources within the area applied for; and

(d) the land and the surface area of the land in respect of which the mining lease is sought is of an appropriate size and shape in relation to—

(i) the matters mentioned in paragraphs (b) and (c); and

(ii) the type and location of the activities proposed to be carried out under the lease and their likely impact on the surface of the land; and

(e) the term sought is appropriate; and

(f) the applicant has the necessary financial and technical capabilities to carry on mining operations under the proposed mining lease; and

(g) the past performance of the applicant has been satisfactory; and

(h) any disadvantage may result to the rights of—

(i) holders of existing exploration permits or mineral development licences; or

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(ii) existing applicants for exploration permits or mineral development licences; and

(i) the operations to be carried on under the authority of the proposed mining lease will conform with sound land use management; and

(j) there will be any adverse environmental impact caused by those operations and, if so, the extent thereof; and

(k) the public right and interest will be prejudiced; and

(l) any good reason has been shown for a refusal to grant the mining lease; and

(m) taking into consideration the current and prospective uses of that land, the proposed mining operation is an appropriate land use.

(5) Where the Land Court recommends to the Minister that an application for the grant of a mining lease be rejected in whole or in part the Land Court shall furnish the Minister with the Land Court's reasons for that recommendation.

(6) If—

(a) the application is for the grant of a coal mining lease; and

(b) under section 318BA, a preference decision is required;

the Land Court can not recommend that the lease not be granted so as to give preference to petroleum development.

271 Criteria for deciding mining lease application

In considering an application for the grant of a mining lease, the Minister must consider—

(a) any Land Court recommendation for the application; and

(b) the matters mentioned in section 269(4).

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271A Deciding mining lease application

(1) The Minister may, after considering the criteria under section 271 for a mining lease application, decide to—

(a) grant the applicant a mining lease for the whole or part of the land in the proposed lease area; or

(b) reject the application; or

(c) refer the matter to the Land Court to conduct a hearing or further hearing on the application generally or on specific matters raised by the Minister.

(2) However, a mining lease may only be granted for land that is the surface of a reserve if—

(a) the owner of the land has given written consent to the grant over the surface area and the applicant has lodged the consent with the chief executive; or

(b) the Governor in Council has consented to the grant over the surface area.

Note—

If the application relates to acquired land, see also section 10AAC.

(3) Also, a mining lease may only be granted for land below the surface of the whole or part of a reserve that is rail corridor land if—

(a) the owner of the land has given written consent to the grant for the land below the surface and the applicant has lodged the consent with the chief executive; or

(b) the Governor in Council has consented to the grant for the land below the surface.

(4) If a mining lease is granted for only part of the land, the application is taken to have been rejected for the rest of the land.

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271B Steps to be taken after application decided

(1) This section applies if a mining lease is rejected in whole or in part or the Minister refers the matter to the Land Court (the ***referral***).

(2) The Minister must, as soon as practicable, give the applicant a written notice stating the rejection or the referral and the reasons for it.

272 Minister may remit to Land Court for additional evidence

(1) This section applies if the Minister, under section 271A(1)(c), refers the matter to the Land Court.

(2) The Land Court must fix a date for the hearing and immediately give written notice of the date to each of the following—

(a) the chief executive;

(b) the applicant;

(c) each person who has lodged an objection to the application in accordance with section 260.

(3) The date must be at least 20 business days after the day the Land Court fixes the date.

273 Restriction on grant of mining lease that does not include surface of land

A mining lease over land shall not be granted unless—

(a) it includes such an area of the surface of that land; or

(b) where it does not include an area of the surface of that land, the applicant is the holder of such an adjoining mining lease;

as will enable the holder to carry out the purposes for which the firstmentioned mining lease is granted.

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275 Application for inclusion of surface of area of mining lease

(1) Notwithstanding section 232, the holder of a mining lease that does not include any part of the surface of the area of that mining lease or that includes a part only of the surface of the area of that mining lease may at any time apply for an additional part of the surface of that area to be included in the mining lease.

(2) An application made under this section must be made and dealt with in the same way as if it were an application for a mining lease made under this part and, for that purpose, the mining lease notice must state, as the number of the proposed mining lease, the number of the existing lease together with the words 'addition of surface area'.

(3) If the application is granted—

(a) the mining lease must be amended to give effect to the approval and the conditions stated in it; and

(b) the chief executive must record in the register the details of the approval.

275A Application for surface of restricted land to be included in mining lease

(1) The holder of a mining lease may, at any time during the term of the mining lease, lodge an application with the chief executive for the Minister's approval for the surface of restricted land for the mining lease to be included in the mining lease.

(2) The Minister may grant an application to include the surface of restricted land for the mining lease in the mining lease only if—

(a) each relevant owner of the restricted land has given written consent to the application; and

(b) the applicant has lodged each consent with the chief executive; and

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(c) there is an agreement about compensation, or a decision of the Land Court on compensation, with each relevant owner of the restricted land (other than an owner who is the applicant) for the inclusion of the surface of the land in the mining lease.

(3) An application under subsection (1) must be accompanied by the fee prescribed by regulation.

(4) A relevant owner of restricted land can not withdraw a consent under subsection (2)(a) once it has been lodged with the chief executive.

(5) If the application is granted—

(a) the mining lease must be amended to give effect to the approval and the conditions stated in it; and

(b) the chief executive must record in the register details about the approval.

(6) To remove any doubt, it is declared that an application under this section to include the surface of restricted land for a mining lease in the mining lease is not an application for the grant of a mining lease under section 245.

276 General conditions of mining lease

(1) Each mining lease shall be subject to—

(a) a condition that the holder shall use the area of the mining lease bona fide for the purpose for which the mining lease was granted and in accordance with this Act and the conditions of the mining lease and for no other purpose; and

(b) if the holder uses land outside the boundary of the area of the mining lease for access to the area of the mining lease, a condition that the holder may use the land only for the following purposes—

(i) to transport, by road across the surface of the land, something that is reasonably necessary to allow the

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holder to carry out an authorised activity for the mining lease;

(ii) to transport, by road across the surface of the land, any minerals mined under the authority of a mining tenement held by the holder;

(iii) to construct road transport infrastructure across the surface of the land that is reasonably necessary for the purpose of transporting a thing or mineral mentioned in subparagraph (i) or (ii); and

(c) a condition that the holder must carry out improvement restoration for the mining lease; and

(d) a condition that the holder, prior to the termination of the mining lease for whatever cause, shall remove any building or structure purported to be erected under the authority of the mining lease and all mining equipment and plant, on or in the area of the mining lease unless otherwise approved by the Minister; and

(e) a condition that without the prior approval of the Minister the holder shall not obstruct or interfere with any right of access had by any person in respect of the area of the mining lease; and

(f) a condition that the holder shall furnish as required under this Act all prescribed reports, returns, documents and statements whatever; and

(g) a condition that the holder give materials obtained under the holder's mining operations to the Minister at the times, in the way and in quantities the Minister reasonably requires by written notice to the holder; and

(h) where the mining lease is in respect of land that is a reserve, a condition that the holder shall comply with the terms and conditions upon which the consent of the owner or the Governor in Council to the grant of the mining lease was given; and

(i) if the area of the mining lease has not been surveyed and a physical monument is used to define the area's

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boundary—a condition that the holder must maintain the monument; and

(j) a condition that the holder shall make all payments of compensation and comply with all terms of any agreement or determination relating to compensation at the time or times as agreed or determined pursuant to section 279, 280, 281 or 282; and

(k) a condition that the holder—

(i) shall pay the rental as prescribed; and

(ii) shall pay the royalty as prescribed; and

(iii) shall pay all local government rates and charges lawfully chargeable against the holder in respect of the area of the mining lease; and

(iv) shall deposit as required by the Minister any security from time to time under this Act; and

(l) a condition that the holder shall comply with this Act and other mining legislation; and

(m) such other conditions as are prescribed; and

(n) such other conditions as the Minister determines.

(1A) Without limiting subsection (1), the Minister may determine a condition of a mining lease if the Minister considers the condition is in the public interest.

(2) The Minister may grant a mining lease without the imposition of the conditions specified in subsection (1)(c) and (h).

(3) A mining lease may be subject to a condition that mining operations under the mining lease shall commence within a specified period after its grant or as otherwise approved in writing by the Minister.

(4) Conditions may be imposed in respect of a mining lease that require compliance with specified codes or industry agreements.

(5) Despite subsections (1) to (4), a condition must not be determined, imposed or prescribed if it is the same, or

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substantially the same, or inconsistent with, a relevant environmental condition for the mining lease.

(7) A mining lease granted after the commencement of the *Mineral Resources Amendment Act 1998* is subject to a condition that the holder comply with the At Risk agreement.

276B Other agreement conditions

(1) This section applies if—

(a) a registered indigenous land use agreement under the Commonwealth Native Title Act, or an agreement mentioned in section 31(1)(b) of the Commonwealth Native Title Act, provides for the grant, renewal or variation of, or another act concerning, a mining lease; and

(b) the State is a party to the agreement; and

(c) the agreement includes a requirement that, if the act is done, the mining lease must be subject to conditions stated in the agreement (the ***stated conditions***); and

(d) the act is done.

(2) The mining lease is subject to the stated conditions.

277 Provision of security

(1) The holder of a mining lease must deposit security for the lease to ensure the holder—

(a) complies with the conditions of the lease; and

(b) complies with this Act; and

(c) rectifies actual damage that may be caused by activities under the lease to pre-existing improvements for the lease; and

(d) pays amounts (other than penalties) payable under this Act to the State.

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(2) The Minister must fix the amount of security to be deposited under subsection (1).

(3) Despite subsection (2), the Minister may, at any time and in the Minister's absolute discretion, decide that the holder must deposit extra security.

(4) Before the holder of a mining lease starts operations under the lease, the holder must deposit the amount fixed under subsection (2) or, with the Minister's approval, security of a kind mentioned in subsection (9) for the amount.

(5) The Minister, if satisfied that any condition of the mining lease or any provision of this Act has not been complied with or that damage referred to in subsection (1)(c) has been caused by any person purporting to act under the authority of the mining lease or who enters land upon the instruction of the holder, the Minister may require that person to take all action necessary to rectify that noncompliance or damage and, save where the person was not the holder and was not upon the land with the holder's approval at the time the damage was caused, may utilise for that purpose the whole or part of the amount of the security deposited in respect of that mining lease.

(6) If the amount of the security deposited by the holder of a mining lease is not earlier reviewed pursuant to subsection (7), the Minister shall review that amount at the expiration of 5 years from the grant of the mining lease or from the previous review.

(7) On the use under this section of any part of the security deposited in respect of a mining lease, the Minister may review the amount of the security deposited by the holder in respect of that mining lease.

(8) If, upon that review, the Minister considers that a further amount of security should be deposited in respect of that mining lease, the Minister shall require the holder of the mining lease, within the time specified by the Minister to deposit a further specified security.

(9) The Minister may accept a bond or a guarantee or indemnity by, or other financial arrangement with, a financial institution,

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insurance company or another credit provider approved by the Minister or other form of security acceptable to the Minister as the whole or part of the security to be deposited under this section.

(10) It shall be a condition of a mining lease that the holder shall deposit security or further security from time to time in accordance with a requirement made as provided by this section.

(11) Where a mining lease has expired or been terminated, the Minister shall, subject to subsection (13), refund to the holder of the mining lease (or as the holder in writing directs) any security deposited and not utilised as provided by subsection (5) less any amounts determined by the Minister to be retained towards—

(a) rectification of any matters caused by the noncompliance with any of the conditions of the mining lease or with any order or direction made or given by the Minister under this Act and directed to the holder; and

(b) amounts (other than penalties) the holder owes to the State under this Act (whether before or after the termination); and

(c) rates and charges (including interest on unpaid rates and charges) owing to a local government by the former holder for the mining lease.

(12) For matters mentioned in subsection (11), security must be applied to each of the matters in turn.

(13) If the Minister accepts a bond, guarantee or indemnity by, or another financial arrangement with, a financial institution, insurance company or other credit provider as security under this section, any amount payable to the holder under subsection (11) must be refunded to the financial institution, insurance company or credit provider and not to the holder of the mining lease to which the security relates.

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278 Utilisation of security deposit towards subsequent mining lease

If the holder of a mining lease or an expired mining lease makes application for a further mining lease, the Minister may, instead of refunding the whole or part of the security deposited in respect of the existing or expired mining lease, retain that security or part thereof (together with any further security fixed by the Minister) as the security (in which case it shall be taken to be or to be part of the security) deposited by the applicant in respect of the further mining lease.

278A Land Court's jurisdiction for At Risk agreement

(1) The Land Court has jurisdiction to hear and decide a proceeding about the following matters under a condition of a mining lease requiring compliance with the At Risk agreement—

(a) whether hardship, as defined under the agreement, exists;

(b) the fair market value of a property for the purposes of the agreement.

(2) In a proceeding under subsection (1)(a), the Land Court must consider—

(a) all relevant matters put before the committee in any mediation under the agreement; and

(b) the final recommendation made by the committee in the mediation.

(3) In a proceeding, a copy of the agreement as at a particular date, certified as a true copy by the chief executive, is admissible as evidence of the agreement at that date until the contrary is proved.

(4) Despite the *Limitation of Actions Act 1974*, a proceeding must start—

(a) for a matter that arose before the commencement of this section—within 1 year after the commencement; or

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(b) for a matter that arose after the commencement of this section—within 1 year after the committee gives notice of its final recommendation about whether hardship, as defined under the agreement, exists.

(5) In this section—

committee means the committee mentioned in the At Risk agreement.

279 Compensation generally

(1) A mining lease shall not be granted or renewed, and an application under section 275A must not be granted for the surface of restricted land to be included in a mining lease, unless—

(a) compensation has been determined (whether by agreement or by determination of the Land Court) between the applicant and each person who is the owner of land the surface of which is the subject of the application and of any surface access to the mining lease land; or

(b) there is no person (other than the applicant) who is the owner of any of the land referred to in paragraph (a);

and the conditions of the agreement or determination have been or are being complied with by the applicant.

(2) For the purposes of subsection (1)(a) where the Land Court makes a determination of an amount of compensation, that compensation is not determined until—

(a) where no appeal against that determination is lodged within the period prescribed therefor—upon the expiration of that period; or

(b) where an appeal is duly lodged against that determination—upon the determination of the appeal.

(3) An agreement made pursuant to subsection (1)(a) shall not be effective unless and until—

(a) it is in writing signed by or on behalf of the parties; and

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(b) it is filed.

279A Minister may refuse to grant mining lease if compensation not determined

(1) This section applies if—

(a) a person makes an application for the grant of a mining lease; and

(b) compensation in relation to the mining lease has not been determined by agreement between the applicant and each owner of land, or by determination of the Land Court, as mentioned in section 279(1)(a); and

(c) an application under section 281 has not been made to the Land Court for a determination of the amount of compensation in relation to the mining lease; and

(d) 3 months have elapsed since—

(i) if no objection was lodged in relation to the application for the grant of the mining lease—the last objection day for the application; or

(ii) if, under section 265(10), the Land Court remitted a matter relating to the mining lease to the chief executive—the day the Land Court remitted the matter; or

(iii) if, under section 269, the Land Court made a recommendation about the grant of the mining lease—the day the Land Court made the recommendation; or

(iv) if the Governor in Council consented to the grant of the mining lease for land relating to a reserve—the day the Governor in Council consented to the grant.

(2) The Minister may refuse to grant the mining lease.

(3) This section does not limit any other power to refuse to grant a mining lease.

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280 Compensation for owner of land where surface area not included

(1) An owner of land the subject of a mining lease where no part of the surface area of that land is included in the lease may agree with the holder of the mining lease as to compensation for any damage caused to the surface of the land.

(2) An agreement made pursuant to subsection (1) shall not be effective unless and until—

(a) it is in writing signed by or on behalf of the parties; and

(b) it is filed.

281 Determination of compensation by Land Court

(1) At any time before an agreement is made under section 279 or 280, a person who could be a party to the agreement may apply in writing to the Land Court to have the Land Court determine the amount of compensation.

(2) The Land Court is hereby authorised to hear and determine matters referred to in subsection (1).

(3) Upon an application made under subsection (1), the Land Court shall settle the amount of compensation an owner of land is entitled to as compensation for—

(a) in the case of compensation referred to in section 279—

(i) deprivation of possession of the surface of land of the owner;

(ii) diminution of the value of the land of the owner or any improvements thereon;

(iii) diminution of the use made or which may be made of the land of the owner or any improvements thereon;

(iv) severance of any part of the land from other parts thereof or from other land of the owner;

(v) any surface rights of access;

(vi) all loss or expense that arises;

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as a consequence of the grant or renewal of the mining lease; and

(b) in the case of compensation referred to in section 280—

(i) diminution of the value of the land of the owner or any improvements thereon;

(ii) diminution of the use made or which may be made of the land of the owner or any improvements thereon;

(iii) all loss or expense that arises;

as a consequence of the grant or renewal of the mining lease.

(4) In assessing the amount of compensation payable under subsection (3)—

(a) where it is necessary for the owner of land to obtain replacement land of a similar productivity, nature and area or resettle himself or herself or relocate his or her livestock and other chattels on other parts of his or her land or on the replacement land, all reasonable costs incurred or likely to be incurred by the owner in obtaining replacement land, the owner's resettlement and the relocation of the owner's livestock or other chattels as at the date of the assessment shall be considered;

(b) no allowance shall be made for any minerals that are or may be on or under the surface of the land concerned;

(c) if the owner of land proves that the status and use currently being made (prior to the application for the grant of the mining lease) of certain land is such that a premium should be applied—an appropriate amount of compensation may be determined;

(d) loss that arises may include loss of profits to the owner calculated by comparison of the usage being made of land prior to the lodgement of the relevant application for the grant of a mining lease and the usage that could be made of that land after the grant;

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(e) an additional amount shall be determined to reflect the compulsory nature of action taken under this part which amount, together with any amount determined pursuant to paragraph (c), shall be not less than 10% of the aggregate amount determined under subsection (3).

(5) In any case the Land Court may determine the amounts and the terms, conditions and times when payments aggregating the total compensation payable shall be payable.

(6) An amount of compensation decided by agreement between the parties, or by the Land Court, is binding on the parties and the parties' personal representatives, successors and assigns.

(7) The Land Court shall give written notice of its determination to all parties and may make such order as to costs between the parties to the determination as it thinks fit.

282 Appeal against Land Court's determination upon compensation

(1) A party aggrieved by a determination of the Land Court made under section 281 may, within 20 business days of the date of that determination or within such further period as the Land Appeal Court, on the application of that party in that behalf prior to the lodgement of the appeal, considers appropriate in any particular circumstances, appeal against the determination to the Land Appeal Court.

(2) The appeal shall be instituted by, within the time and in the manner prescribed—

(a) lodging in the Land Court, written notice of appeal which shall include the grounds of appeal; and

(b) serving copies of the notice of appeal on the chief executive and each other party.

(3) The Land Appeal Court shall have jurisdiction to hear and determine an appeal under this section.

(4) In deciding an appeal, the Land Appeal Court must consider the things relevant to the appeal that the Land Court was

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required to consider when making the decision appealed against.

(5) Upon hearing an appeal under subsection (1) the Land Appeal Court may—

(a) vary the determination of the Land Court in such way as it thinks just; or

(b) disallow the appeal and confirm the determination of the Land Court;

and may make such order as to costs of the appeal as it thinks fit.

(6) The Land Appeal Court shall not admit further evidence upon an appeal from a determination of the Land Court under subsection (1) unless—

(a) it is satisfied that admission of the evidence is necessary to avoid grave injustice and there is sufficient reason that the evidence was not previously adduced; or

(b) the appellant and respondent agree to its admission.

(7) The determination of the Land Appeal Court on appeal shall be final and conclusive.

282A Security for costs of appeal

(1) This section applies when an appeal under section 282 is lodged.

(2) A further step can not be taken in the appeal until security for the costs of the appeal has been lodged under this section.

(3) The registrar of the Land Court must, within 10 business days, decide the form and amount of the security.

(4) The registrar must give the appellant written notice of the decision as soon as practicable after making it.

(5) The appellant must lodge the security in the decided form and amount within 15 business days after the giving of the notice.

(6) If the appellant does not comply with subsection (5), the appeal lapses.

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283 Public trustee may act in certain circumstances

(1) If there is doubt as to the identity of the owner of land or the owner of land can not be found, the Land Court may determine that the public trustee shall represent the owner for the purpose of any negotiation or proceeding under section 279, 280, 281 or 282.

(2) Any action taken or thing done or omitted to be done by the public trustee as representative of the owner of land pursuant to subsection (1) shall be taken for all purposes to be taken, done or omitted by that owner.

(3) Where, pursuant to subsection (1) the public trustee represents an owner of land, for the purposes of this part any moneys paid to the public trustee under any agreement or determination made under section 279, 280, 281 or 282 shall be deemed to have been paid to the owner.

283A Agreement to amend compensation

(1) This section applies if—

(a) compensation (the ***original compensation***) has been agreed under section 279 or 280 for a mining lease; or

(b) compensation (also the ***original compensation***) has been determined under section 281 or 282 for a mining lease and there has, since the determination, been a material change in circumstances for the lease.

Example of a material change in circumstances—

a different mining method that changes the impact of mining operations under the lease

(2) The mining lease holder and each owner in relation to the lease mentioned in section 279(1)(a) or 280(1) may, by signed writing, agree to amend the original compensation (the ***amendment agreement***).

(3) However, the amendment agreement does not take effect until it is filed with the registrar.

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(4) After the amendment agreement takes effect, the original compensation, as amended by the agreement, is for this Act, other than this section, taken to be the original compensation.

283B Review of compensation by Land Court

(1) This section applies if—

(a) compensation has been agreed under section 279 or 280 or determined under section 281 or 282 for a mining lease (the ***original compensation***); and

(b) there has, since the agreement or determination, been a material change in circumstances for the mining lease.

Example of a material change in circumstances—

a different mining method that changes the impact of mining operations under the lease

(2) The mining lease holder or any owner in relation to the mining lease mentioned in section 279(1)(a) or 280(1) may apply to the Land Court for it to review the original compensation.

(3) Sections 281(3) to (7), 282 and 282A apply, with necessary changes, to the review as if it were an application under section 281(1).

(4) The Land Court may, after conducting the review, decide to confirm the original compensation or amend it in a way the Land Court considers appropriate.

(5) However, before making the decision, the Land Court must have regard to—

(a) the original compensation, other than any part of it that consists of an additional amount under section 281(4)(e); and

(b) whether the applicant has attempted to mediate or negotiate an amendment agreement for the original compensation; and

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(c) any change in the matters mentioned in section 281(3) and (4) since the original compensation was agreed or determined.

(6) If the decision is to amend the original compensation, the original compensation, as amended under the decision, is for this Act, other than this section, taken to be the original compensation.

284 Initial term of mining lease

(1) The initial term of a mining lease is the period approved by the Minister, unless the lease is sooner terminated.

(2) Despite subsection (1), the term of the mining lease must not be for a period longer than the period for which compensation has been agreed or determined under section 279, 281 or 282.

(3) The initial term of a mining lease commences on the first day of the month that next follows the day the mining lease is granted.

(4) From the grant of a mining lease to the commencement of the initial term thereof the holder shall have all the entitlements, powers, duties and functions that the holder has during the term of the lease except section 290 shall not apply.

285 Mining lease may be specified it is not renewable

(1) Subsection (2) applies if the Minister is satisfied the land the subject of an application for grant or renewal of a mining lease is, or will be, required for some purpose other than mining.

(2) The Minister may grant the lease or renewal subject to a condition that the holder is not entitled to have the mining lease renewed or further renewed.

(3) If a mining lease is granted or renewed subject to a condition mentioned in subsection (2)—

(a) the Minister must give written notice of the reasons for the decision; and

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(b) the chief executive must record in the register the details of the condition.

286 Application for renewal of mining lease

(1) The holder of a mining lease, including a lease subject to a condition mentioned in section 285, may, within the renewal period, apply to the Minister for a renewal of the lease by lodging an application with the chief executive.

(2) The application must be—

(a) made in the approved form; and

(b) accompanied by the fee prescribed under a regulation; and

(c) accompanied by a statement about the following matters—

(i) the term for which the mining lease is to be renewed;

(ii) the reason for seeking the renewal;

(iii) if the lease was granted for a purpose mentioned in section 234(1)(a)—whether the area the subject of the application contains workable quantities of mineral or mineral bearing ore;

(iv) if the lease was granted for a purpose mentioned in section 234(1)(b)—the particular purpose for which the renewal is sought;

(v) if a mining program is proposed to be carried out under the renewed lease—the proposed mining program and its method of operation;

(vi) whether the operations to be carried on during the term of the renewed lease are an appropriate land use and will conform with sound land use management;

(vii) whether the land and surface area in relation to which the renewal is sought is of an appropriate

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size and shape for the activities proposed to be carried out under the renewed lease;

(viii) the financial and technical resources available to the applicant to carry on mining operations under the renewed lease;

(ix) in relation to the parcels of land the whole or part of which are the subject of the application—

(A) a description of the parcels of land; and

(B) the current use of the land; and

(C) the name and address of the owner of the land (the ***primary land***) and the name and address of any other land which may be used to access the primary land.

(3) Within 5 business days after the application is made, the holder must—

(a) give a copy of the application and of any documents or information prescribed by regulation to the following persons (each ***an interested party***)—

(i) each owner of land the subject of the mining lease;

(ii) each owner of land outside the boundary of the area of the mining lease the holder intends to use to access the area of the mining lease; and

(b) if, in relation to the grant or renewal of the mining lease, an agreement for compensation has been made with an interested party under section 279 or a determination of compensation for an interested party has been made under section 281—give a copy of the most recent agreement or determination to the interested party.

(4) For subsection (3), the application given to an interested party need not include—

(a) information that may disclose the holder's financial and technical resources; or

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(b) information that has a commercial or other value that would be, or could be expected to be, destroyed or diminished if the information were disclosed.

(5) In this section—

renewal period means the period that is—

(a) at least 6 months, or any shorter period allowed by the Minister in the particular case, before the current term of the lease expires; and

(b) not more than 1 year before the current term expires.

286A Decision on application

(1) The Minister may grant an application for the renewal of a mining lease if satisfied of each of the following—

(a) the holder has complied with—

(i) the terms of the lease; and

(ii) this Act in relation to the lease;

(b) the area of the lease—

(i) still contains workable quantities of mineral or mineral bearing ore; or

(ii) is otherwise required for purposes for which the lease was granted;

(c) the proposed term of the renewed lease is appropriate;

(d) having regard to the current and prospective uses of the area of the lease, the operations to be carried on during the renewed term of the lease—

(i) are an appropriate land use; and

(ii) will conform with sound land use management;

(e) the land and surface area for which the renewal is sought is of an appropriate size and shape in relation to the activities proposed to be carried out;

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(f) the financial and technical resources available to the holder to carry on mining operations under the renewed lease are appropriate;

(g) the public interest will not be adversely affected by the renewal;

(h) for a lease subject to a condition mentioned in section 285—the lease should be renewed.

Note—

If the application relates to acquired land, see also section 10AAC.

(2) Subsection (3) applies if—

(a) the application relates to land that is the surface of a reserve; and

(b) the Governor in Council's consent was given to the grant of the mining lease; and

(c) the owner of the reserve does not give written consent to the renewal.

(3) Despite subsection (1), the Minister can not grant the application if the Governor in Council has not consented to the renewal.

(4) The renewal may be granted for the further term, decided by the Minister, that is not longer than the period for which compensation has been agreed or determined under section 279, 281 or 282.

(5) The renewed lease is subject to—

(a) any conditions prescribed under a regulation; and

(b) any conditions decided by the Minister.

(6) Without limiting subsection (5), the Minister may decide a condition of the renewed lease if the Minister considers the condition is in the public interest.

(7) The Minister may refuse the application if the Minister—

(a) has served on the holder a notice in the approved form asking the holder to show cause, within the period stated

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in the notice, why the application should not be refused; and

(b) after considering the holder's response, is satisfied the application should be refused.

(8) Without limiting subsection (7)(b), the Minister may refuse the renewal if the Minister considers the renewal is not in the public interest.

(9) Without limiting subsection (7)(b), the Minister may also refuse the renewal if—

(a) compensation is to be determined as mentioned in section 279(1)(a) for the renewal of the mining lease; and

(b) the compensation is not determined within 3 months after the current term of the lease would, apart from section 286C, end; and

(c) an application has not been made to the Land Court under section 281.

(10) As soon as practicable after deciding the application, the Minister must give the holder a written notice stating—

(a) the decision; and

(b) if the decision is to grant the renewal on conditions or refuse the renewal—the reasons for the decision.

286C Continuation of lease while application being dealt with

(1) Subsection (2) applies if—

(a) a properly made application for renewal of a mining lease is not withdrawn, refused or granted before the lease's expiry day ends; and

(b) after the expiry day, the holder—

(i) continues to pay rental on the lease and other amounts required to be paid under this Act; and

(ii) otherwise complies with this Act and the lease conditions.

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(2) The lease continues in force subject to the rights, entitlements and obligations in effect immediately before the end of the expiry day until the application is withdrawn, refused or granted.

286D When term of renewed lease starts

(1) If a mining lease is renewed before its expiry day ends, the term of the renewed lease starts on the day after the expiry day.

(2) If the lease is renewed after the expiry day, the term of the renewed lease is taken to have started on the day after the expiry day.

286E When new conditions of renewed lease start

(1) If a renewed mining lease is subject to conditions (the ***new conditions***) different from, or not included in, the lease conditions applying immediately before its renewal, the new conditions apply from the later of the following—

(a) the start of the term of the renewed lease;

(b) the day the renewal is granted.

(2) However, if the lease is continued in force under section 286C, the holder must pay rental on the lease from the day after its expiry day at the rate that would have been payable, from time to time, if the renewed mining lease had been renewed on the day after the expiry day.

(3) Subsection (2) applies even though payment of rental may be a condition of the lease.

286F Renewal of lease must be in name of last recorded transferee

(1) This section applies if a transfer of a mining lease is registered under the Common Provisions Act—

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(a) after the date on which an application for renewal of the lease is made; and

(b) before the application is disposed of by the Minister.

(2) Any renewal granted on the application must be in the name of the transferee under the last transfer registered before the grant of the renewal.

287 Notice of rejection of renewal application

If the Minister decides to reject an application to renew a mining lease, the Minister must promptly give the applicant a written notice stating the decision and the reasons for it.

288 Holder to notify owner of grant or renewal of mining lease

(1) The holder of a mining lease must notify each owner of land in the area of the lease of the grant or renewal of the lease.

(2) The notice must be given within 20 business days after the holder receives notice of the grant or renewal.

(3) If the lease is for a purpose mentioned in section 234(1)(b), the reference in subsection (1) to the owner of land includes the holder of an exploration permit, mineral development licence or mining lease over the land.

290 Rental payable on mining lease

(1) Upon the grant of a mining lease rental shall first be payable thereon with respect to the period from the commencement of the term of the mining lease to 31 August of that year (the ***first rental period***) and shall be paid within 20 business days (or such longer period as the Minister in the particular case approves) of the grant of the mining lease.

(2) The amount of the rental payable in respect of the first rental period shall be an amount that bears to the rental payable for a rental year prescribed pursuant to subsection (4) for the rental year in which the first rental period falls the same proportion

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that the number of whole calendar months of the first rental period bears to 12.

(3) In respect of each rental year or part thereof of the term of a mining lease (other than the first rental period) a full rental year's rental shall be payable in advance not later than 31 August of the previous rental year.

(4) If the full rental payable for a rental year is paid in advance, the amount of the rental shall be the amount prescribed under a regulation for that rental year.

(5) If, for a particular rental year, rental is not paid in advance—

(a) the chief executive shall, prior to 30 September of that rental year, notify the holder of and any person holding a recorded interest in the mining lease that the rental has not been paid and of the amount of rental payable as prescribed by paragraph (b); and

(b) the amount of the full rental payable for the rental year shall be payable before 1 December of that rental year and shall be an amount equal to the amount prescribed under a regulation for that rental year plus an amount equal to 15% of that prescribed amount.

(6) Upon the renewal of a mining lease, no further rental shall be payable in respect of the period that, if the renewal was a grant of a mining lease, would be the first rental period, except where that period commences on 1 September.

(7) Except as provided in subsection (9), where in any rental year a mining lease is surrendered or terminated through effluxion of time and is not renewed there shall be refundable to the last holder of the mining lease an amount that bears to the amount of the rental that was paid in respect of that rental year the same proportion that the number of whole calendar months from—

(a) the date of surrender or termination; or

(b) the date of rejection of the application for renewal;

whichever is the later, to 31 August of that rental year bears to 12.

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(8) Subsections (3) to (7) apply to a mining lease continued in force under section 286C, with all necessary changes and with any changes prescribed by regulation, in the same way as they would apply if the lease had been renewed on the last day of its term.

(9) No amount shall be refunded pursuant to subsection (7) where a mining lease is surrendered within its first rental period after its original grant.

290A Application of GST to rents for certain mining leases

(1) This section applies to a lease, however called, that, under the repealed schedule to this Act, section 3, became a mining lease under this Act.

Editor's note—

The repealed schedule to this Act was repealed by the *Offshore Minerals Act 1998*, section 446 and schedule 4, section 4.

(2) If any rent payable under the lease after 30 June 2005 is for a supply for which GST is payable, the rent payable is the total of—

(a) the rent that would have been payable if the rent were not for a supply for which GST is payable; and

(b) 10% of the rent that would have been payable if the rent were not for a supply for which GST is payable.

(3) Subsection (2) applies despite the provisions of the mining lease.

294 Variation of conditions of mining lease

(1) The conditions to which a mining lease is subject may be varied by the Minister if—

(a) the varied conditions are not inconsistent with this Act; and

(b) the holder of the mining lease gives the Minister written agreement.

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(2) However, the Minister must not vary a condition of a mining lease if the condition as varied is the same or substantially the same as, or inconsistent with, a relevant environmental condition for the lease.

(3) Without limiting subsection (1), the Minister may refuse to vary a condition of a mining lease if the Minister considers the variation is not in the public interest.

(4) A mining lease that is duly varied pursuant to subsection (1) shall thereafter until again varied, be subject to its conditions as so varied.

(5) The chief executive must record in the register the details of every variation made under this section of the conditions of a mining lease.

295 Variation of mining lease for accuracy etc.

(1) The Minister may vary a mining lease for all or any of the following reasons—

(a) the boundaries and area of the mining lease have been more accurately worked out and described by survey or another method approved by the Minister;

(b) the lease is contiguous to another mining lease and—

(i) the holders of the mining leases have agreed to exchange areas adjoining a part of a boundary common to both mining leases; and

(ii) the Minister has approved the exchange;

(c) new facts have arisen since the grant of the mining lease that satisfy the Minister that the variation should be made to more accurately reflect the holder's entitlements under the lease.

(2) A variation of a mining lease pursuant to subsection (1) shall take effect from the time indicated in that variation.

(3) Notice of every variation of a mining lease pursuant to subsection (1) shall be given in writing by the Minister to the

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holder of the mining lease and to all persons holding an interest recorded as provided in this part in the mining lease.

(4) The chief executive shall cause suitable recordings to be made in the register that the mining lease has been varied.

(5) Where, prior to receiving a notice of variation pursuant to subsection (3) the holder of a mining lease has placed any improvements, machinery, plant or equipment on land which, by reason of the variation, has ceased to be part of the area of the mining lease, the holder may within 20 business days after receipt by the holder of that notice, apply to the Minister for permission to enter upon that land and to remove the improvements, machinery, plant or equipment or any part thereof.

(6) Upon application duly made to the Minister under subsection (5), the Minister shall grant permission to the applicant in respect thereof for such period and upon such conditions as the Minister thinks fit.

(7) The applicant, together with the applicant's workers and persons delivering goods or substances or providing services ancillary to that purpose and vehicles and equipment, may enter upon land and remove improvements, machinery, plant or equipment or any part thereof in accordance with the permission granted pursuant to subsection (6).

(8) Where a mining lease has been varied pursuant to subsection (1), the holder thereof shall be deemed to hold indemnified the Crown, the Minister and all officers, servants and agents of the Crown and the Minister against all claims arising out of anything done pursuant to this Act or done on or in land which, by reason of that variation, has ceased to be part of the area of the mining lease.

(9) Where the boundaries and size of the area of a mining lease have been varied pursuant to subsection (1)(a)—

(a) the condition under section 276(1)(d) that applied before the variation shall continue to apply after that variation in respect of activities carried on before that variation; and

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(b) the conditions (other than the condition referred to in paragraph (a)) that applied before the variation shall cease to apply after that variation in respect of activities carried on after that variation;

in respect of the land that has ceased to be part of the area of the mining lease.

(10) Where the boundaries and size of the area of a mining lease have been varied pursuant to subsection (1)(a), the conditions of the lease shall from that variation also apply in respect of land that becomes part of the area of the mining lease.

(11) Where an exchange of parts of land has been effected pursuant to subsection (1)(b), in respect of each mining lease—

(a) the conditions that applied before the exchange shall continue to apply in respect of the area of the mining lease after the exchange; and

(b) the conditions that applied before the exchange shall cease to apply in respect of the part of land that has ceased to be part of the area of the mining lease.

(12) Notwithstanding subsections (9) and (11), the provisions of sections 277 and 308 shall continue to apply after a variation of a mining lease pursuant to subsection (1) in respect of any acts done or omitted to be done before that variation.

(13) The Minister may direct and authorise the holder of a mining lease to enter upon land that has ceased to be part of the area of the mining lease to comply with any condition referred to in subsection (9) or (11).

(14) This section shall not be construed to abrogate or prejudice any right had by the Crown or a person, authority or body in respect of land which by reason of a variation pursuant to subsection (1) has ceased to be part of the area of a mining lease, from proceeding in any court of competent jurisdiction or independently of this Act to recover damages or to obtain any other remedy in respect of damage or injury suffered or loss incurred by reason of a person acting or purporting to act under the authority of that mining lease but any moneys paid under section 277 in respect of damage the subject of the

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proceedings shall be taken into account by that court in assessing the loss or damage.

(15) The person who was the holder of a mining lease that is varied pursuant to this section shall pay the prescribed royalty in respect of all mineral mined by the person or on the person's behalf from land that ceases to be a part of the area of the mining lease as if it had been mined under the authority of that mining lease.

298 Mining other minerals or use for other purposes

(1) The holder of a mining lease for the mining of minerals may lodge an application in writing with the chief executive for the Minister's approval to mine specified minerals (other than coal seam gas), being minerals not specified in the mining lease, in respect of the whole or that part of the land specified in the mining lease that is not currently the subject of a mining lease or mineral development licence (or an application for a mining lease or mineral development licence) in respect of those specified minerals.

Note—

See also chapter 8, part 8, division 1.

(2) The application shall be accompanied by the prescribed application fee.

(3) The application and any other application for the grant of a mining lease for the same minerals must be considered and decided according to the day on which they are lodged.

(3A) If the applications were lodged on the same day—

(a) they take the priority the Minister decides, after considering the relative merits of each application; and

(b) the chief executive must give each applicant a written notice stating there is competition for priority between the applicant's application and another application, or other applications, lodged on the same day as the day on which the applicant's application was lodged.

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(4) The holder of a mining lease granted for purposes (other than mining of minerals) may lodge an application in writing with the chief executive for the Minister's approval for the addition of such purposes not specified in the mining lease (being not those of mining for minerals), which the Minister accepts are appropriate for the mining lease and are not inconsistent with this Act.

(5) The application shall be accompanied by the prescribed fee.

(6) The holder of a mining lease granted for the mining of minerals may apply in writing to the chief executive for the Minister's approval for the addition of such purposes not specified in the mining lease as are not inconsistent with this Act.

(7) The application shall be accompanied by the prescribed fee.

(8) The Minister may approve or reject an application under this section.

(9) Without limiting subsection (8), the Minister may reject the application if the Minister considers the addition is not in the public interest.

(10) Upon the Minister approving an application under this section and compliance by the applicant with any requirements imposed by the Minister, the relevant mining lease shall be deemed to include the specified minerals or, as the case may be, the additional purposes.

Note—

See, however, the Environmental Protection Act, section 426 (Environmental authority required for particular environmentally relevant activities) and chapter 5, part 13.

(11) Without limiting subsection (12)(a), a condition may be imposed on the approval of the Minister if the Minister considers the condition is in the public interest.

(12) An approval of the Minister under this section may be subject to—

(a) conditions; and

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(b) the requirement to deposit such security under section 277 as the Minister determines.

(13) The chief executive must record in the register the details of an approval given under this section.

299 Consolidation of mining leases

(1) The holder of mining leases for the mining of minerals in respect of contiguous areas may lodge an application in writing with the chief executive for the grant of a mining lease consolidating those mining leases.

(2) The application shall be accompanied by the prescribed fee.

(3) If the chief executive is not satisfied the areas are adjoining, the holder may apply to the Land Court for an order declaring the areas to be adjoining areas for this section.

(4) The Minister may cancel the mining leases referred to in an application lodged pursuant to subsection (1) and grant the mining lease applied for, subject to such conditions as may be imposed by or under this Act.

(5) If, within the proposed area of the consolidated mining lease, there is an area not included in 1 of the leases to be consolidated, the Minister may include the area in the consolidated mining lease.

(6) A consolidated mining lease may be granted only if the Minister is satisfied arrangements for compensation, the deposit of security and the proposed conditions of the mining lease are adequate.

(7) Sections 232, 238, 245, 251 to 253, 260, 265, 266, 268, 269, 271 to 272 and 275 and such other provisions as the Minister approves do not apply in respect of an application for and grant of a mining lease under this section.

(8) The provisions of section 312(3) do not apply in respect of a mining lease terminated for the purposes of the grant of a mining lease under this section.

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(9) Notwithstanding the provisions of section 277(11), the security that pursuant to that section would have been refunded to the holder of the cancelled mining leases or as the holder directs may, at the request of the applicant, be retained by the Minister towards security required under section 277(1) to be deposited by the holder of the new mining lease issued under subsection (4).

307 Abandonment of application for the grant of a mining lease

(1) The applicant for a mining lease may, at any time before the grant of the mining lease, by notice in writing to the chief executive abandon the application in respect of the whole or part of the land applied for.

(2) The abandonment shall take effect on the day next following its receipt by the chief executive.

(3) The applicant for the grant of a mining lease who gives a notice referred to in subsection (1) to the chief executive shall forthwith serve a copy of that notice on—

(a) if the application has been referred to the Land Court under section 265—the Land Court; and

(b) all other persons on whom the applicant was required under this Act to give a copy of the mining lease notice for the application.

(4) Where an application for the grant of a mining lease is abandoned in respect of part only of the land applied for, the application shall be amended to show the area in respect of which the mining lease application is to remain in force in the same manner as is required for an original application and the amended application shall proceed in respect of that area in accordance with this part.

308 Contravention by holder of mining lease

(1) If the Minister considers that the holder of a mining lease—

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(a) has carried out activities that are not bona fide for the purposes for which the mining lease was granted; or

(b) has failed to pay the royalty or any other moneys payable thereunder (other than rental) or in respect thereof by the due date for payment; or

(c) has failed to comply with any condition that is to be observed and performed by the holder under or in respect of the mining lease, other than a condition with respect to matters referred to in subsection (2)(a) or (b);

the Minister may—

(d) cancel the mining lease; or

(e) impose on the holder a penalty not exceeding 1,500 penalty units.

(2) If the Minister considers that the holder of a mining lease—

(a) in any rental year has failed after notice given to the holder in accordance with section 290(5) to pay before 1 December of that rental year the amount of the rental payable under that section by that date in respect of that mining lease; or

(b) has failed to pay a penalty imposed on the holder pursuant to subsection (1)(e) within the time allowed for the payment by the Minister;

the Minister may cancel the mining lease.

(3) The Minister shall not act pursuant to subsection (1) until the Minister has, by notice in writing in the approved form served on the holder of the mining lease, called upon the holder to show cause within the time specified therein why the mining lease should not be cancelled or a penalty imposed and served a copy of the notice on every person who currently holds a recorded interest in respect of the mining lease at the person's address last recorded by the chief executive and such cause has not been shown to the satisfaction of the Minister.

(4) When the Minister pursuant to this section cancels a mining lease the Minister shall notify the holder and every person

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who holds a recorded interest in respect of the mining lease accordingly stating the reason for the cancellation.

(5) The cancellation of a mining lease under this section shall take effect on the day next following the Minister's determination to cancel the mining lease.

309 Surrender of mining lease

(1) The holder of a mining lease may apply to surrender the mining lease or any part of the area of the mining lease at any time before the expiration of its term.

(2) The holder of a mining lease who desires to surrender a mining lease or any part of the area of the mining lease shall lodge with the chief executive—

(a) a notice of surrender in the approved form; and

(b) for the surrender of the whole of the area of the mining lease—

(i) a properly completed royalty return, unless it has already been lodged under section 320(4); and

(ii) either—

(A) the royalty payable to the State under section 320(3)(a), unless it has already been paid; or

(B) evidence that the royalty has been paid to another person entitled to the royalty under section 320(3)(b); and

(c) the fee prescribed under a regulation.

(4) The Minister may, by written notice, give the mining lease holder directions about carrying out improvement restoration for the mining lease.

(5) A purported surrender of a mining lease or of any part of the area of a mining lease shall not be effective unless—

(a) the holder has complied with this section; and

(b) the Minister consents to the surrender.

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(6) However, the Minister may give the consent only if the Minister is satisfied—

(a) the holder has complied with the condition to carry out improvement restoration for the mining lease; and

(b) the relevant environmental authority has been cancelled or surrendered under the Environmental Protection Act.

(7) If part of the area of a mining lease is surrendered under this section—

(a) the chief executive must record in the register the details of the surrender; and

(b) the lease continues in force for the part of the area not surrendered.

(8) Upon a surrender of a mining lease, all adjustments between the holder and the Crown in respect of the payment of rental, fees and other moneys shall be at the discretion of the Minister.

(9) Where any moneys are specified pursuant to subsection (8) as a debt due to the Crown, the Minister may direct that the security deposited in accordance with section 277 may be utilised for payment thereof.

(10) Nothing in this section shall prevent the Crown from recovering moneys from a person specified in subsection (8) as liable to pay and unpaid (whether directly or through utilisation of the security deposit) by action in the Land Court.

(11) In a proceeding for the recovery of an amount owing to the State under this Act, a certificate signed by the chief executive stating the amount of the debt is evidence of the amount of the debt.

(12) Where, at the time when the holder of a mining lease purports to surrender the mining lease or a part of the area of the mining lease, the holder applies for a new mining claim or mining lease for the whole or part of the area of the current mining lease, the purported surrender shall take effect immediately prior to the grant of the new mining claim or mining lease.

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(13) Nothing in section 232 shall prevent a holder of a mining lease, at the time the holder surrenders the mining lease or part of the area of the mining lease, from applying for the grant of a mining lease over the whole or part of the area of the surrendered mining lease and the grant of the mining lease applied for.

(14) A surrender of a mining lease (other than a surrender referred to in subsection (12)) shall take effect on the day next following its acceptance by the Minister.

310 Minerals taken become property of holder of mining lease

All minerals lawfully mined under the authority of a mining lease cease to be the property of the Crown or person who had property therein and become the property of the holder of the mining lease subject however to the rights to royalty payments under this Act of the Crown or any other person.

311 Royalties in respect of minerals taken under mining lease

The holder of a mining lease shall pay in respect of all minerals mined or purported to be mined under the authority of the mining lease, the royalty prescribed pursuant to chapter 11.

312 Effect of termination of mining lease

(1) This section applies on the termination of a mining lease.

(2) However, this section does not apply to a mining lease if the termination is for granting a mining claim or a new mining lease over the area of the terminated lease to the holder of the terminated lease.

(3) The person who was the holder of the terminated mining lease immediately before its termination must immediately remove each post or other thing used to mark the land under this Act (other than a survey mark or anything else required under another Act not to be removed).

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(4) On the termination of the mining lease, the ownership of all mineral and property on the land in the area of the terminated lease divests from the owner and vests in the State.

(5) However, subsection (4) applies to property only if it was brought on to the land under the terminated mining lease.

313 Application for approval to remove mineral and property

(1) This section applies to mineral and property that vests in the State on the termination of a mining lease.

(2) Anyone who had an interest in the mineral or property immediately before its ownership vests in the State may apply in writing to the chief executive for the Minister's permission to remove the mineral or property from the land.

(3) The application—

(a) must be made within 20 business days (or a longer period, of not more than 3 months, allowed by the Minister) after the mineral or property vests in the State; and

(b) may be made even though a subsequent grant of a mining claim, exploration permit, mineral development licence or mining lease is made over for the land.

(4) The Minister may approve or refuse to approve the application.

(5) However, the Minister must approve the application if the Minister is satisfied—

(a) the person was entitled to the mineral or property immediately before it vested in the State; and

(b) there is enough security to meet the costs for which it was deposited.

Note—

For the provision of security, see section 277.

(6) The approval may be given on conditions stated in it.

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(7) If the application is approved, the person named in the approval may enter the land and remove the mineral or property (other than covers, fencing, casings, linings, timbering or other things securing the safety of the land) stated in the application before the time stated in the approval ends.

(8) Anything removed under subsection (7) divests from the State and vests in the person entitled to it immediately before the termination of the mining lease.

(9) However, mineral divests from the State and forms part of the land if it is not removed before the later of—

(a) the end of the time stated in an approval under this section; or

(b) 3 months after the mining lease's termination.

314 Property remaining on former mining lease may be sold

(1) This section applies if the chief executive has not received an application, or has received an application that has not been granted, for approval to remove property from the site of a terminated mining lease within 3 months after the lease's termination.

(2) The Minister may direct the chief executive to—

(a) sell the property by public auction or in another stated way; or

(b) if the property has no commercial value—dispose of or destroy it.

(3) Proceeds of a sale are to be applied in the following order towards—

(a) the reasonable expenses incurred in the sale;

(b) the cost of rectifying actual damage for which an amount of security deposited for the terminated mining lease could have been used, but was not used, or was inadequate;

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(c) costs and expenses mentioned in the Environmental Protection Act, section 316C;

(d) amounts owing to the State under this Act by the former holder;

(e) any other amounts owing to the State under the Environmental Protection Act for a relevant environmental authority;

(f) rates and charges (including interest on unpaid rates and charges) owing to a local government by the former holder for the lease;

(g) amounts owing to a mortgagee under a mortgage registered under the Common Provisions Act over the lease.

(4) Any balance must be paid to the former holder.

(5) If the chief executive can not decide the identity of, or locate, a person entitled to the proceeds or part of the proceeds, the chief executive may pay the amount to the public trustee as unclaimed moneys.

(5A) A secured party can not enforce any security interest in the proceeds of sale against an entity to whom an amount is payable under subsection (3)(a) to (e).

(6) Compensation is not payable for a sale, disposal or destruction under this section.

(7) In this section—

PPS Act means the *Personal Property Securities Act 2009* (Cwlth).

secured party has the meaning given by the PPS Act, section 10.

security interest has the meaning given by the PPS Act, section 12.

315 Activity report for mining lease

(1) A regulation may—

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(a) require a holder or former holder of a mining lease to give the Minister a report (an ***activity report***) about the activities carried out under the mining lease; and

(b) prescribe the following for the activity report—

(i) when the report is to be given;

(ii) the information to be contained in the report.

(2) The holder or former holder must give an activity report in compliance with the regulation.

Maximum penalty—150 penalty units.

315A Relinquishment report for mining lease

(1) This section applies in relation to a holder of a mining lease who, under a relinquishment condition, relinquishes part of the area of the lease.

(2) A regulation may—

(a) require the holder to give the Minister a report (a ***relinquishment report***) about the relinquishment; and

(b) prescribe the following for the relinquishment report—

(i) when the report is to be given;

(ii) the information to be contained in the report;

(iii) the persons to whom a copy of the report is to be given.

(3) The holder must give a relinquishment report in compliance with the regulation.

Maximum penalty—150 penalty units.

315B Surrender report for mining lease

(1) This section applies in relation to a holder of a mining lease who applies, under section 309, to surrender the lease or a stated part or percentage of the area of the lease.

(2) A regulation may—

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(a) require the holder to give the Minister a report (a ***surrender report***) about the surrender; and

(b) prescribe the following for the surrender report—

(i) when the report is to be given;

(ii) the information to be contained in the report.

(3) The holder must give a surrender report in compliance with the regulation.

Maximum penalty—150 penalty units.

316 Mining lease for transportation through land

(1) This section applies if a person who holds, or is an applicant for, a mining lease for a particular area—

(a) wants a mining lease over land that is not in the area of the person's lease for the transportation of something through, over or under the land by a pipeline, aerial ropeway, conveyor apparatus, transmission line or similar method of transport, or road; and

(b) does not hold an exploration permit or mineral development licence for the land.

(2) The Minister may grant to a person a mining lease for the transportation of the thing through, over or under the land covered by the application for the lease if—

(a) the Minister is satisfied the proposed lease is for a purpose associated with or arising from activities performed, or to be performed, under the person's mining lease; or

(b) before the person applied for the lease, the Governor in Council, under a regulation, declared the transportation of the thing through, over or under land that is not in the area of a mining lease by a pipeline, aerial ropeway, conveyor apparatus, transmission line or similar method of transport to be an activity associated with or arising from mining.

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(3) An application for a mining lease under this section must be given to the chief executive.

(4) If land included in the application is in the area of an exploration permit or mineral development licence, the application does not have to be accompanied by the consent of the permit or licence holder, but the applicant must give written notice of the application to the permit or licence holder within 5 business days after lodging the application.

(6) This section does not apply for the transportation of incidental coal seam gas.

Note—

The person may apply for a pipeline licence under the Petroleum and Gas (Production and Safety) Act, chapter 4, part 2.

317 Variation of access to mining lease area

(1) The holder of a mining lease may apply to the chief executive in the approved form for a variation of the land used or proposed to be used as access in relation to the area of the mining lease.

(2) An application for a variation of the land used or to be used as access under this section shall be accompanied by—

(a) such particulars as are, by section 245, required to accompany an application for the grant of a mining lease in so far as those particulars relate to the land used or proposed to be used as access in relation to surface area of the land the subject of the mining lease; and

(b) the prescribed application fee.

(3) Where, in respect of an application for a variation of the land used or proposed to be used as access under this section, the chief executive is not satisfied that the owner of the land proposed to be used as access consents to the use, the chief executive must refer the issue of consent to the Land Court for its consideration.

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(4) The Land Court must fix a date for the hearing and immediately give written notice of the date to each of the following—

(a) the chief executive;

(b) the applicant;

(c) the land owner.

(4A) The date must be at least 20 business days after the day the Land Court fixes the hearing date.

(5) The Land Court shall hear and determine the matter by determining—

(a) that consent to the proposed variation should or should not be given; and

(b) if consent should be given—the amount (if any) of compensation payable by the holder in respect of the proposed use of that land as access.

(5A) Without limiting subsection (5), the Land Court may determine that consent to the proposed variation should not be given if the court considers the variation is not in the public interest.

(6) Subject to subsection (7), the provisions of section 281(3) to (7) apply in respect of a matter referred to the Land Court under this section as if the matter were an application referred to the Land Court under section 281(1).

(7) In determining compensation payable under subsection (5), allowance shall be made for compensation agreed or determined to be payable in respect of the current land used as access in respect of the mining lease.

(8) The determination of the Land Court of a matter under this section shall be final and conclusive.

(9) In respect of an application made under this section, upon—

(a) where the proposed access is over land of which there is an owner—

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(i) lodgement with the chief executive of the consent in writing of the owner or owners of that land; or

(ii) where the Land Court determines that consent should be granted, whether with or without compensation, compliance with any terms and conditions imposed by the Land Court to be complied with before consent is given; and

(b) where the proposed access is over land of which there is no owner, the chief executive determining that the variation is, in the circumstances, appropriate;

the chief executive shall record the variation of that access in the register and advise the holder and the owner accordingly.

(9A) Without limiting subsection (9)(a)(ii), the Land Court may impose terms and conditions to be complied with before consent is given if the court considers the condition is in the public interest.

(10) An agreement made between a holder and an owner of land regarding compensation payable in respect of the proposed use of the land as access in respect of a mining lease as a result of a variation under this section shall not be effective unless and until—

(a) it is in writing signed by or on behalf of the parties; and

(b) it is filed.

318 Improvement restoration for mining lease

(1) This section applies on the termination of a mining lease, other than—

(a) by surrender under section 309; or

(b) for the granting of a new mining lease over the area of the terminated mining lease.

(2) The Minister may, if not satisfied the holder of the terminated mining lease has not carried out improvement restoration for the mining lease, give the holder reasonable written directions about the restoration.

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(3) The holder must comply with the directions.

Maximum penalty—2,000 penalty units.

(4) The holder and the holder's employees or agents may, to the extent reasonable and necessary to comply with the directions—

(a) enter land stated in the notice; and

(b) bring on to the land vehicles, vessels, machinery and equipment.

Part 2 Mining lease for Aurukun project

318AAA Application of pts 1 and 2

(1) This part applies—

(a) only for the granting of, and in relation to, a mining lease for an Aurukun project; and

(b) only if the holder of the lease is a party to the relevant Aurukun agreement; and

(c) if the agreement has not been terminated.

(2) Part 1, except to the extent mentioned in subsection (3), also applies for the granting of, and in relation to, a mining lease for an Aurukun project.

(3) Sections 232, 233, 239, 245, 248 to 251, 266, 271A(1)(c), 271B, 272, 273, 275, 276, 280, 283, 284, 285 and 286A do not apply for the granting of, and in relation to, a mining lease for an Aurukun project.

(4) Also, a reference in a provision of part 1 to a provision that has been disapplied under subsection (3) is to be disregarded.

(5) To remove any doubt, it is declared that this part applies to the following—

(a) a mining lease under section 234 for a purpose mentioned in section 234(1)(a) or (b);

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(b) a mining lease under section 316 for the transportation of a thing.

318AAB Only eligible person can apply for and hold mining lease (233)

(1) A person (an ***applicant***) may apply for a mining lease under this part only if—

(a) the applicant is an eligible person; and

(b) the applicant holds a mineral development licence to all the land proposed to be the subject of the mining lease.

(2) A mining lease under this part can only be held by an eligible person.

(3) The application and grant of a lease may be made even if the land for an Aurukun project is part of a restricted area.

Note—

The numbers bracketed in the headings to this and other sections of this part are references to corresponding sections in part 1.

(4) Despite subsection (1), a mining lease granted under this part may be cancelled under section 318AAL even though the holder has ceased to be an eligible person.

318AAD Application for grant of mining lease (245)

An application for the grant of a mining lease must—

(a) be in the approved form; and

(b) describe all parcels of land the whole or part of which are the subject of the application and state the following for each parcel—

(i) the current use of the land;

(ii) whether the land is subject to erosion control works;

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(iii) the names and addresses of the owners of the parcel and any other land to be used to access the parcel; and

(c) identify, in the way prescribed by regulation, the boundaries of the land applied for; and

(d) identify, in the way prescribed by regulation, the boundaries of any surface area of land within the boundaries identified in paragraph (c) to be included in the mining lease and specify the purpose for which that area is to be used; and

(e) identify, in the way prescribed by regulation, the boundaries of any restricted land within the boundaries identified in paragraph (c); and

(f) give reasons why the mining lease should be granted in respect of the area and shape of the land described in the application; and

(g) describe and identify, in the way prescribed under a regulation, any land proposed to be used as access from a point outside the boundary of the land applied for acceptable to the chief executive to land over which the lease is sought; and

(h) be accompanied by a sketch, map or other graphic representation acceptable to the chief executive setting out the boundaries of any land referred to in paragraphs (b), (d) and (g); and

(i) nominate the term of the lease sought and give reasons for the term; and

(j) be lodged; and

(k) be accompanied by—

(i) a statement, acceptable to the chief executive outlining the mining program proposed, outlining its method of operation, and providing an indication of when operations are expected to start or, if a mining program is not proposed, outlining

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the use proposed for the land and providing an indication of when the proposed use is to start; and

(ii) a statement, acceptable to the chief executive of proposals for infrastructure requirements necessary to enable the mining program to proceed, or additional activities to be carried on to work out the infrastructure requirements; and

(iii) the application fee prescribed under a regulation.

318AAE Limits on consideration and disclosure of Aurukun agreement in Land Court hearing

(1) This section applies—

(a) if the Land Court is hearing an application for a mining lease under section 268; and

(b) despite sections 268(2) and 318AAA and any rule of court or other law.

(2) In hearing the application, the Land Court may consider the Aurukun agreement for the Aurukun project the subject of the application, but only to the extent necessary to decide whether the applicant for the mining lease is an eligible person to make the application and to hold the mining lease.

(3) The Aurukun agreement is not required to be disclosed to any person in relation to the hearing.

(4) Subsection (3) applies even if the Land Court considers the Aurukun agreement under subsection (2).

318AAEA Steps to be taken after application decided (271B)

If a mining lease application is rejected in whole or in part, the Minister must, as soon as practicable, give the applicant written notice stating the rejection and the reasons for it.

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318AAF Mining lease must include all surface of land (273)

A mining lease over land must not be granted unless it includes the whole of the surface of the land.

318AAH General conditions of mining lease (276)

(1) Each mining lease is subject to—

(a) a condition that the holder must use the area of the lease for the purpose for which the lease was granted and in accordance with this Act and the conditions of the lease and for no other purpose; and

(b) if the holder uses land outside the boundary of the area of the mining lease for access to the area of the mining lease, a condition that the holder may use the land only for the following purposes—

(i) to transport, by road across the surface of the land, something that is reasonably necessary to allow the holder to carry out an authorised activity for the mining lease;

(ii) to transport, by road across the surface of the land, any minerals mined under the authority of a mining tenement held by the holder;

(iii) to construct road transport infrastructure across the surface of the land that is reasonably necessary for the purpose of transporting a thing or mineral mentioned in subparagraph (i) or (ii); and

(c) a condition that the holder must carry out improvement restoration for the lease; and

(d) a condition that the holder, before the end of the lease for whatever cause, must remove any building or structure purported to be erected under the authority of the lease and all mining equipment and plant, on or in the area of the lease unless otherwise approved by the Minister; and

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(e) a condition that without the prior approval of the Minister the holder must not obstruct or interfere with any right of access had by any person in relation to the area of the lease; and

(f) a condition that the holder is not to transfer, mortgage or sublease the lease, or any part of it, unless the Minister is satisfied that any approval or consent required under the relevant Aurukun agreement has been given; and

(g) a condition that the holder give, in the way prescribed under a regulation, all reports, returns, documents and statements prescribed under a regulation; and

(h) a condition that the holder give materials obtained under the holder's mining operations to the Minister at the times, in the way and in quantities the Minister reasonably requires by written notice to the holder; and

(i) if the lease is over land that is a reserve—a condition that the holder comply with the terms and conditions on which the consent of the owner or the Governor in Council to the grant of the lease was given; and

(j) if the area of the lease has not been surveyed and a physical monument is used to define the area's boundary—a condition that the holder must maintain the monument;

(k) a condition that the holder make all payments of compensation and comply with all terms of any agreement or determination relating to compensation at the time or times agreed or determined under section 279, 281 or 282; and

(l) a condition that the holder—

(i) pay the rental prescribed under a regulation; and

(ii) pay the royalty prescribed under a regulation; and

(iii) pay all local government rates and charges lawfully chargeable against the holder for the area of the lease; and

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(iv) deposit, as required by the Minister, any security from time to time under this Act; and

(m) a condition that the holder comply with this Act, other mining legislation and the At Risk agreement; and

(n) any other conditions stated in the relevant Aurukun agreement to be conditions of the lease; and

(o) any other conditions decided by the Minister.

(2) Without limiting subsection (1), the Minister may decide a condition of the mining lease if the Minister considers the condition is in the public interest.

(3) Each mining lease may be subject to a condition that mining operations under the lease commence within a stated period after its grant.

(4) Conditions requiring compliance with stated codes or industry agreements may be imposed for each mining lease.

(5) Despite subsections (1) to (4), a condition must not be imposed if it is the same, or substantially the same, or inconsistent with, a relevant environmental condition for the lease.

318AAI Initial term of mining lease (284)

(1) The initial term of a mining lease is for the period approved by the Minister, starting on the first day of the month next following the day on which the lease is granted.

(2) From the grant of the lease to the start of the initial term the holder has all the entitlements, powers, duties and functions that the holder has during the term of the lease.

(3) Despite subsection (2), no rent is payable for the period before the initial term starts.

318AAJ Renewal of lease (286A)

(1) This section applies—

(a) despite section 318AAA; and

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(b) if the relevant Aurukun agreement has not been terminated before the application for the renewal of a mining lease is made.

(2) Section 286A, other than subsection (1)(h), applies to the renewal.

318AAK Requirements for transferring, mortgaging or subleasing mining leases

(1) Subsection (2) applies to restrict a transfer or mortgage of a mining lease in addition to any requirements under the Common Provisions Act.

(2) A mining lease, or an interest in a mining lease, can not be transferred, mortgaged or subleased unless the Minister is satisfied that any approval or consent required under the relevant Aurukun agreement for the transfer, mortgage or sublease has been given.

318AAL Contravention by holder of mining lease (308)

In addition to section 308, if the relevant Aurukun agreement has been terminated, the Minister may cancel the lease.

318AAM Limitation on surrender of mining lease (309)

(1) This section applies if the holder of a mining lease wishes to surrender the lease.

(2) Despite section 318AAA, section 309 does not apply unless the Minister is satisfied the holder has fully discharged its obligations under the relevant Aurukun agreement.

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Chapter 7 Transfers affecting applications for mining leases

Part 1 Application transfers

Division 1 Preliminary

318AAN Application of pt 1

This part applies to the following transfers (each an ***application transfer***)—

(a) a transfer of an application for a mining lease;

(b) a transfer of an interest in an application for a mining lease.

Division 2 Registration generally

318AAO Registration required for all application transfers

(1) An application transfer has no effect until it is registered.

(2) A registered application transfer takes effect on the day the transfer is approved under division 3.

318AAP Obtaining registration

(1) Registration of an application transfer is carried out by the chief executive.

(2) However, an application transfer must be approved by the Minister under division 3 before it can be registered.

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318AAQ Effect of approval and registration

The registration of an application transfer, or an approval of an application transfer under division 3, allows the transfer to have effect according to its terms but does not of itself give the transfer any more effect or validity than it would otherwise have.

Division 3 Approval of application transfers

318AAR Indicative approval

(1) An applicant for a mining lease, or the holder of an interest in an application for a mining lease, may, before applying for an approval of an application transfer for the mining lease, apply—

(a) for an indication of whether the transfer is likely to be approved (an ***indicative approval***); and

(b) if conditions are likely to be imposed on the giving of the approval—for an indication of what the conditions are likely to be.

(2) The application must be—

(a) made to the Minister; and

(b) in the approved form; and

(c) accompanied by—

(i) the information the Minister requires to make a decision; and

(ii) the fee prescribed by regulation.

(3) In deciding whether or not to give the indicative approval, the Minister must consider the matters mentioned in section 318AAT(2) as if the request were an application for approval of an application transfer.

(4) The Minister must decide whether or not to give the indicative approval and give the applicant notice of the decision.

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318AAS Applying for approval of application transfer

(1) An applicant for a mining lease, or the holder of an interest in an application for a mining lease, may apply for approval of an application transfer for the application.

(2) The application must be made to the Minister in the approved form and be accompanied by—

(a) a written consent to the transfer by the proposed transferee; and

(b) a written consent to the transfer by each person, other than the transferor, who is an applicant for the application; and

(c) the fee prescribed by regulation.

(3) However, an application can not be made under this section if the proposed transferee is not an eligible person.

318AAT Deciding application

(1) The Minister must decide whether or not to give the approval of the application transfer for the application.

(2) In deciding whether or not to give the approval, the Minister must consider—

(a) the application for approval and any additional information accompanying the application; and

(b) whether the transferee has the human, technical and financial resources to comply with the conditions of a mining lease under section 276; and

(c) the public interest.

(3) However, subsection (2) does not apply if, under subsection (5) or (6), the approval is taken to have been given.

(4) The approval may be given only if the proposed transferee is—

(a) an eligible person; and

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(b) a registered suitable operator under the Environmental Protection Act.

(5) The approval is taken to have been given if—

(a) under section 318AAR, an indicative approval has been given for the proposed transfer; and

(b) subsection (4) does not prevent the giving of the approval; and

(c) within 3 months after the giving of the indicative approval—

(i) an application for approval of the application transfer is made; and

(ii) if, under section 318AAR, an indication of likely conditions was given—the conditions are complied with.

(6) The approval is also taken to have been given if—

(a) subsection (5)(a) and (b) is satisfied; and

(b) before the expiration of 6 months after the giving of the indicative approval—

(i) the applicant gives the chief executive a statement that there has been no material change relevant to the matters for which the indicative approval was given; and

(ii) subsection (5)(c)(i) and (ii) is satisfied.

(7) Despite subsections (5) and (6), the approval of the application transfer is taken not to have been given if—

(a) the request for indicative approval contained incorrect material information or omitted material information; and

(b) had the Minister been aware of the discrepancy, the Minister would not have given the indicative approval.

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318AAU Written notice about decision

(1) If the Minister decides to give the approval, the Minister must give the applicant for the approval written notice of the decision.

(2) If the Minister decides not to give the approval, the Minister must give the applicant for the approval written notice of the decision stating the following—

(a) the decision and the reasons for it;

(b) the rights of appeal under this Act;

(c) the period in which an appeal must be started;

(d) how rights of appeal are to be exercised;

(e) that a stay of a decision may be applied for under this Act.

Note—

For appeals against refusal to approve an application transfer, see part 4.

Part 4 Appeals about transfers

318AAZM Who may appeal

(1) A person whose interests are affected by any of the following decisions may appeal against the decision to the Land Court—

(a) a decision of the Minister to refuse to approve an application transfer under section 318AAT;

(b) a decision of the Minister to refuse to approve registration of a dealing, or to approve registration of a dealing with conditions, under the Common Provisions Act, section 19(3);

(c) a decision of the Minister to refuse to give an indicative approval, or to give the indicative approval with conditions, under the Common Provisions Act, section 23(3).

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(2) For this section, a person who has been given or is entitled to be given a notice about the decision under section 318AAU is taken to be a person whose interests are affected by the decision.

318AAZN Period to appeal

(1) The appeal must be started within 20 business days after—

(a) if the person has been given a notice about the decision—the day the person is given the notice; or

(b) if paragraph (a) does not apply—the day the person otherwise becomes aware of the decision.

(2) However, the Land Court may at any time within the 20 business days extend the period for starting the appeal.

318AAZO Starting appeal

(1) The appeal is started by filing a written notice of appeal with the Land Court.

(2) The appellant must give the chief executive a copy of the notice.

318AAZP Stay of operation of decision

(1) The Land Court may grant a stay of the decision to secure the effectiveness of the appeal.

(2) A stay—

(a) may be given on the conditions the Land Court considers appropriate; and

(b) operates for the period fixed by the Land Court; and

(c) may be amended or cancelled by the Land Court.

(3) The period of a stay under this section must not extend past the time when the Land Court decides the appeal.

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(4) The appeal affects the decision or carrying out of the decision only if it is stayed.

318AAZQ Hearing procedures

(1) In deciding an appeal, the Land Court—

(a) has the same powers as the Minister; and

(b) is not bound by the rules of evidence; and

(c) must comply with natural justice; and

(d) may hear the appeal in court or in chambers.

(2) An appeal is by way of rehearing unaffected by the decision.

(3) Subject to subsections (1) and (2), the procedure for the appeal is—

(a) in accordance with the rules for the Land Court; or

(b) in the absence of relevant rules, as directed by the Land Court.

(4) A power under an Act to make rules for the Land Court includes power to make rules for appeals under this part.

318AAZR Land Court's powers on appeal

(1) In deciding an appeal under this part, the Land Court may—

(a) confirm the decision; or

(b) set aside the decision and substitute another decision; or

(c) set aside the decision and return the issue to the Minister with the directions the court considers appropriate.

(2) If the Land Court substitutes another decision, the substituted decision is for this Act, other than this part, taken to be the decision of the Minister.

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Chapter 8 Provisions for coal seam gas

Part 1 Preliminary

Division 1 Introduction

318AB Relationship with chs 4–6 and the Common Provisions Act

(1) Requirements and restrictions under this chapter apply as well as any relevant requirements and restrictions under chapters 4 to 6 and the Common Provisions Act.

(2) If this chapter imposes a requirement for, or a restriction on, the granting, renewal, consolidation, transfer or subleasing of a coal or oil shale mining tenement, the mining tenement can not be granted, renewed, consolidated, transferred or subleased if the restriction applies or if the requirement has not been complied with.

(3) If this chapter imposes a requirement for, or a restriction on, the carrying out of an authorised activity for a coal or oil shale mining tenement, despite chapters 4 to 6 and the Common Provisions Act, the activity is not an authorised activity for the tenure while the restriction applies or if the requirement has not been complied with.

(4) If a provision of this chapter conflicts with a provision of chapters 4 to 6 or the Common Provisions Act, the provision of this chapter prevails to the extent of the inconsistency.

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Division 2 Definitions for chapter 8

318AC What is *coal seam gas* and *incidental coal seam gas*

(1) ***Coal seam gas*** is a substance (in any state) occurring naturally in association with coal or oil shale, or with strata associated with coal or oil shale mining, if the substance is petroleum under the Petroleum and Gas (Production and Safety) Act.

(2) ***Incidental coal seam gas*** is defined in section 318CM(2).

318AD What is *oil shale*

Oil shale is shale or other rock (other than coal) from which a gasification or retorting product, as defined in the Petroleum and Gas (Production and Safety) Act, may be extracted or produced.

318AE What is a *coal exploration tenement*, a *coal mining lease* and a *special coal mining lease*

(1) A ***coal exploration tenement*** is an exploration permit or mineral development licence granted for coal.

(2) A ***coal mining lease*** is—

(a) a mining lease for coal; or

(b) a mining lease or special coal mining lease granted under any of the following Acts, an agreement provided for under any of the Acts or any amendment of an agreement provided for under any of the Acts—

(i) the *Central Queensland Coal Associates Agreement Act 1968*;

(ii) the *Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Acts 1962* to *1965*; or

Note—

For specific provisions dealing with mining leases mentioned in this paragraph, see subdivision 3.

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(c) a specific purpose mining lease for a purpose associated with, arising from or promoting the activity of coal mining, whether or not it is also granted for a purpose other than coal mining.

(3) Subsections (1) and (2)(a) apply whether or not the permit, licence or lease is also granted for another mineral.

(4) However, for parts 1 to 7—

(a) a coal exploration tenement does not include an exploration permit or mineral development licence granted for coal to which the Common Provisions Act, chapter 4, applies; and

(b) a coal mining lease does not include a mining lease granted for coal to which the Common Provisions Act, chapter 4, applies.

318AF What is an *oil shale exploration tenement* and an *oil shale mining lease*

(1) An ***oil shale exploration tenement*** is an exploration permit or mineral development licence granted for oil shale.

(2) An ***oil shale mining lease*** is—

(a) a mining lease for oil shale; or

(b) a specific purpose mining lease for a purpose associated with, arising from or promoting the activity of oil shale mining, whether or not it is also granted for a purpose other than oil shale mining.

(3) Subsections (1) and (2)(a) apply whether or not the permit, licence or lease is also granted for another mineral.

318AG What is a *coal or oil shale mining tenement*

A ***coal or oil shale mining tenement*** is—

(a) a coal or oil shale exploration tenement; or

(b) a coal mining lease or an oil shale mining lease.

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318AH What is a *development plan* and its *plan period*

(1) The ***development plan***, for a coal mining lease or an oil shale mining lease, is its current initial or later development plan, as approved under part 9.

(2) For subsection (1), the development plan is current if the period to which the plan applies has started and has not ended.

Note—

See also sections 318DK and 318EE.

(3) The period to which a development plan applies is its ***plan period***.

318AI Petroleum tenures

(1) A ***petroleum lease*** is a petroleum lease under the *Petroleum Act 1923* or the Petroleum and Gas (Production and Safety) Act.

(2) An ***authority to prospect*** is an authority to prospect under the *Petroleum Act 1923* or the Petroleum and Gas (Production and Safety) Act.

(3) A ***petroleum tenure*** is an authority to prospect or a petroleum lease.

(4) However, for parts 1 to 7—

(a) a petroleum lease does not include a petroleum lease under the Petroleum and Gas (Production and Safety) Act to which the Common Provisions Act, chapter 4, applies; and

(b) an authority to prospect does not include an authority to prospect under the Petroleum and Gas (Production and Safety) Act to which the Common Provisions Act, chapter 4, applies.

318AJ What is a *coordination arrangement*

A ***coordination arrangement*** is a coordination arrangement under the Petroleum and Gas (Production and Safety) Act.

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318AK What is *the public interest*

The public interest is a consideration of each of the following—

(a) government policy;

(b) value of commodity production (including time value);

(c) employment creation;

(d) total return to the State and to Australia (including royalty and rent), assessed on both a direct and indirect basis, so that, for example, downstream value adding is included;

(e) social impacts;

(f) the overall economic benefit for the State, or a part of the State, in the short and long term.

Division 3 Relationship with particular special agreement Acts

318AL Application of ch 8 to grant of special coal mining lease under Central Queensland Coal Associates Agreement Act 1968

(1) This chapter applies to the granting of a special coal mining lease under the *Central Queensland Coal Associates Agreement Act 1968* (the ***CQCA Act***).

(2) If this chapter imposes a requirement for, or a restriction on, the granting of a special coal mining lease under the CQCA Act, the lease can not be granted if the restriction applies or if the requirement has not been met.

(3) For this section, the grant of a lease includes an addition to the land subject to an existing special coal mining lease granted under the special agreement Act.

(4) This section applies despite any provision of the CQCA Act.

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318AM Chapter prevails over special agreement Acts

If a provision of this chapter conflicts with a provision of an Act or agreement mentioned in section 318AE(2)(b), the provision of this chapter prevails to the extent of the inconsistency.

318AN No compensation

(1) No amount, whether by way of compensation, reimbursement or otherwise is payable by the State to any person for or in connection with the enactment or operation of this division or section 318AE(2)(b).

(2) Subsection (1) applies despite any provision of a special agreement Act and despite any other Act or law.

Part 2 Obtaining coal or oil shale mining lease over land in area of authority to prospect (other than by or jointly with, or with the consent of, authority to prospect holder)

Division 1 Preliminary

318AO Application of pt 2

(1) This part applies if a person wishes to apply for a coal mining lease or an oil shale mining lease for all or part of the land in the area of an authority to prospect.

(2) However, this part does not apply if—

(a) the person is the authority to prospect holder; or

(b) the application is to be made jointly with the holder; or

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(c) the application is made with the holder's written consent; or

(d) the land is also in the area of a petroleum lease and the same person holds the authority to prospect and the petroleum lease.

Notes—

1 For the circumstances mentioned in subsection (2)(a) to (c), see part 3.

2 For the circumstance mentioned in subsection (2)(d), see part 6.

Division 2 Provisions for making coal or oil shale mining lease application

318AP Additional requirements for making application

(1) The application must include—

(a) a statement (a ***CSG statement***) assessing—

(i) the likely effect of proposed coal mining on the future development of petroleum production from the land; and

(ii) the technical and commercial feasibility of coordinated petroleum production and coal or oil shale mining from the land; and

(b) a proposed development plan that complies with the initial development plan requirements; and

Note—

For requirements for proposed initial development plans, see part 9, division 2.

(c) other information that addresses the matters mentioned in subsection (2) (the ***CSG assessment criteria***), other than the matter mentioned in subsection (2)(c)(iii).

(2) The CSG assessment criteria are—

(a) the initial development plan requirements; and

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(b) the legitimate business interests of the applicant and the authority to prospect holder (the ***parties***); and

Examples of a party's legitimate business interests—

1 contractual obligations

2 the effect on, and use of, existing infrastructure or mining or production facilities

3 exploration expenditure on relevant overlapping tenures

(c) the effect of the proposed mining lease on the future development of petroleum resources in the land, including for example, each of the following—

(i) the proposed timing and rate of coal or oil shale mining and the development of petroleum from the land;

(ii) the potential for the parties to make a coordination arrangement about—

(A) coal or oil shale mining and any incidental coal seam gas mining under the proposed mining lease; and

(B) petroleum production under any future petroleum lease over the land;

(iii) the attempts required of the applicant under section 318AT(1)(b) and any change of the type mentioned in section 318AT(1)(c);

(iv) the economic and technical viability of the concurrent or coordinated coal or oil shale mining and the development of any petroleum from the land;

(v) the extent, nature and value of coal or oil shale mining and the development of any petroleum in the land; and

(d) the public interest in coal or oil shale mining and petroleum production from the land, having regard to the public interest.

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(3) For subsection (2), if the proposed mining lease is to be granted under section 234(1)(b) for a purpose associated with, arising from or promoting the activity of mining, a reference to mining in the land includes a reference to mining in other land associated with the lease.

Division 3 Provisions for applications in particular circumstances

318AQ Applications relating to authority to prospect and petroleum lease not held by same person

(1) This section applies if a person to whom this part applies wishes to make an application to which this part applies—

(a) for land in the area of each of the following—

(i) the authority to prospect (the ***authority to prospect part***);

(ii) a petroleum lease (the ***petroleum lease part***); and

(b) the authority to prospect and the petroleum lease are not held by the same person.

Note—

If the authority to prospect and the petroleum lease are held by the same person, see part 6.

(2) The person may lodge separate mining lease applications for the authority to prospect part and the petroleum lease part.

(3) A separate application for the authority to prospect part, or the part of an application that relates to the authority to prospect part, must be decided under this part.

(4) A separate application for the petroleum lease part, or the part of an application that relates to the petroleum lease part, must be decided under part 5 or 6.

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318AR Applications relating to other land

(1) This section applies if a person to whom this part applies wishes to make an application to which this part applies and the proposed application includes land (the ***other part***) not in the area of another petroleum tenure.

(2) The person may lodge a separate mining lease application for the other part.

(3) A separate application for the other part, or the part of an application that relates to the other part, must be decided under chapter 6, part 1.

Division 4 Obligations of applicant and authority to prospect holder

318AT Applicant's obligations

(1) The applicant must—

(a) within 10 business days after making the application, give the authority to prospect holder a copy of the application, other than the part of the application consisting of the statement mentioned in section 245(1)(o); and

(b) use reasonable attempts to—

(i) consult with the authority to prospect holder about the applicant's proposed development plan; and

(ii) make an appropriate arrangement with the authority to prospect holder about testing for petroleum production carried out, or proposed to be carried out, by the authority to prospect holder (a ***testing arrangement***); and

Example of testing—

production testing

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Note—

For confidentiality obligations of tenure holders or persons who have applied for a tenure, see part 10.

(c) change the proposed development plan to give effect to any reasonable proposal by the authority to prospect holder that will optimise petroleum production under any future petroleum lease over the land; and

(d) within 4 months after making the application, lodge a written notice stating each of the following—

(i) the details of the consultation;

(ii) the results of the consultation;

(iii) any comments the applicant wishes to make about any submissions lodged by the authority to prospect holder, under section 318AX;

(iv) any changes to the proposed development plan;

(v) if a testing arrangement has been made—details of the arrangement;

(vi) if a testing arrangement has not been made—details of the attempts made to make a testing arrangement;

(vii) the applicant's assessment of the potential of the applicant and the authority to prospect holder to make a coordination arrangement about—

(A) coal or oil shale mining and any incidental coal seam gas mining under the proposed mining lease; and

(B) petroleum production under any future petroleum lease over the land.

(2) However, the obligations under subsection (1)(b)(ii) and (c) apply only to the extent the provisions or arrangement are commercially and technically feasible for the applicant.

(3) For subsection (1)(b)(ii), it is appropriate for the testing arrangement to give the authority to prospect holder the right to carry out testing for petroleum production to help the

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holder make, or allow the deciding of, an application under the Petroleum and Gas (Production and Safety) Act, chapter 2, part 1, division 6.

Note—

See the Petroleum and Gas (Production and Safety) Act, chapter 2, part 1, division 6 (Potential commercial areas).

(4) However, subsection (3) does not require the applicant to agree to testing having a duration of more than 12 months.

318AU Minister may require further negotiation

(1) The Minister may, after receiving the notice under section 318AT(1)(d), require the applicant to conduct negotiations with the authority to prospect holder with a view to—

(a) making a testing arrangement mentioned in section 318AT(1)(b)(ii); or

(b) making changes of a type mentioned in section 318AT(1)(c).

(2) The applicant must use all reasonable attempts to comply with the requirement.

318AV Consequence of applicant not complying with obligations or requirement

If the Minister is reasonably satisfied the applicant has not complied with an obligation under section 318AT or 318AU, the application may be rejected.

Note—

For confidentiality obligations of tenure holders or persons who have applied for a tenure, see part 10.

318AW Authority to prospect holder's obligations

The authority to prospect holder must—

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(a) within 20 business days after receiving a copy of the application, give the applicant basic information the authority holder has about the following that the applicant may reasonably need to comply with sections 318AP and 318AT—

(i) the type of exploration activities carried out, or proposed to be carried out under the authority;

(ii) petroleum in the land; and

(b) after receiving a copy of the application, use reasonable attempts to reach an agreement with the applicant, about the matters mentioned in section 318AT(1)(b) and (c), that provides the best resource use outcome without significantly affecting the parties' rights or interests.

318AX Submissions by authority to prospect holder

(1) The authority to prospect holder may lodge submissions about the application.

(2) However, the submissions may be lodged only within 3 months after the holder is, under section 318AT(1)(a), given a copy of the application (the ***submission period***).

(3) The submissions may—

(a) state that the holder does not object to the granting of the proposed mining lease; and

(b) state that the holder does not wish any preference for the future development of petroleum production from the land (***petroleum development preference***); and

(c) include information about all or any of the following—

(i) exploration carried out under the authority;

(ii) the results of the exploration;

(iii) the prospects for future petroleum production from the land; and

(d) include a proposal by the authority to prospect holder for petroleum production from the land; and

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(e) include information relevant to the CSG assessment criteria.

Note—

For confidentiality obligations of tenure holders or persons who have applied for a tenure, see part 10.

(4) The holder must give the applicant a copy of the submissions.

(5) In deciding the application, regard must be had to the submissions.

Division 5 Priority for earlier petroleum lease application or proposed application

318AY Earlier petroleum lease application

(1) If—

(a) before the making of the mining lease application, a petroleum lease application was made for the land; and

(b) the petroleum lease application complies with the Petroleum and Gas (Production and Safety) Act; and

(c) the petroleum lease application has not been decided;

a mining lease notice can not be issued for the mining lease application until the petroleum lease application has been decided.

(2) However, subsection (1) does not apply if—

(a) the mining lease application was made in response to an invitation in a notice given under the Petroleum and Gas (Production and Safety) Act, section 323 and the application was made within 6 months after the giving of the notice; or

(b) the petroleum lease applicant has given written consent to the mining lease application.

Note—

See, however, the Petroleum and Gas (Production and Safety) Act, chapter 3, part 2, division 3 (Petroleum lease applications in response

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to Mineral Resources Act preference decision) and section 315 (Earlier coal or oil shale mining lease application).

318AZ Proposed petroleum lease for which EIS approval given

(1) This section applies if—

(a) before the making of the mining lease application, an approval under the Environmental Protection Act, chapter 3, part 2, was granted for the voluntary preparation of an EIS for a project that is, or includes, a proposed petroleum lease for the land; and

(b) the proponent for the EIS—

(i) is, or includes, the authority to prospect holder; or

(ii) is someone else who has the authority holder's consent.

(2) A mining lease notice can not be issued for the mining lease application until an application for the proposed petroleum lease is decided.

(3) However, subsection (2) ceases to apply if—

(a) the proponent of the EIS does not make a petroleum lease application for the land within 1 year after the granting of the approval; or

(b) a petroleum lease application for the land is made within the period mentioned in paragraph (a) and—

(i) it does not comply with the Petroleum and Gas (Production and Safety) Act; or

(ii) it is decided; or

(c) the proponent for the EIS has given written consent to the mining lease application.

318B Proposed petroleum lease declared a coordinated project

(1) This section applies if—

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(a) before the making of the mining lease application, a project is declared a coordinated project under the *State Development and Public Works Organisation Act 1971* that is, or includes, a proposed petroleum lease for the land; and

Note—

See the *State Development and Public Works Organisation Act 1971*, section 26 (Declaration of coordinated project).

(b) the proponent for the coordinated project—

(i) is, or includes, the authority to prospect holder; or

(ii) is someone else who has the authority holder's consent.

(2) A mining lease notice can not be issued for the mining lease application until the application for the proposed petroleum lease is decided.

(3) However, subsection (2) ceases to apply if—

(a) the proponent of the coordinated project does not make a petroleum lease application for the land within 1 year after the making of the declaration; or

(b) a petroleum lease application for the land is made within the period mentioned in paragraph (a) and—

(i) it does not comply with the Petroleum and Gas (Production and Safety) Act; or

(ii) it is decided; or

(c) the proponent of the coordinated project has given written consent to the mining lease application.

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Division 6 Ministerial decision about whether to give any preference to petroleum development

318BA When preference decision is required

(1) This division applies for the application only if the Minister is satisfied of each of the following—

(a) there is a resource or reserve (the ***deposit***) of petroleum in the land;

(b) the deposit has been identified under the relevant codes;

(c) there is the level of knowledge about the deposit, as prescribed under a regulation;

(d) the location, quantity, quality, geological characteristics and continuity of the deposit are known, or have been estimated or interpreted, from specific geological evidence and knowledge;

(e) there are reasonable prospects for the eventual economic production of the deposit.

(2) However, this division does not apply if—

(a) the authority to prospect holder has not complied with section 318AW(a); or

(b) the authority to prospect holder has, under section 318AX, lodged a submission stating that the holder does not wish any petroleum development preference for the land; or

(c) the authority to prospect holder has not lodged any submission under section 318AX within the submission period.

(3) If the Minister decides that the Minister is not satisfied as mentioned in subsection (1), the authority holder must be given notice of the decision.

(4) In this section—

relevant codes means any of the following—

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(a) the following documents published by the Society of Petroleum Engineers (***SPE***), as amended and published from time to time—

(i) the document called 'Petroleum Resources Classification System and Definitions';

(ii) the documents called 'Petroleum Reserves Definitions' and 'Standards Pertaining to the Estimating and Auditing of Oil and Gas Reserve Information';

(b) another document (however called) published by SPE that amends or replaces the documents mentioned in paragraph (a);

(c) if a document mentioned in paragraph (a) or (b) stops being published—another similar document prescribed under a regulation.

Notes—

1 If the Minister is not satisfied as mentioned in subsection (1), the application can be decided under chapter 6, part 1.

2 If this subdivision does not apply because of subsection (2), the application can be decided under chapter 6, part 1 and division 8.

318BB Decision about whether to give any preference to petroleum development

(1) Subject to section 318BC, the Minister must decide whether to—

(a) grant the mining lease under section 271A; or

(b) give any petroleum development preference for the land, in whole or part.

(2) The decision under subsection (1) is the ***preference decision***.

(3) In making the preference decision the CSG assessment criteria must be considered.

(4) If, under the Petroleum and Gas (Production and Safety) Act, chapter 3, part 2, division 1, subdivision 6, coal or oil shale development preference has been given for the land, the

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preference decision is taken to be not to give any petroleum development preference for any of the land.

318BC Reference to Land Court before making preference decision

(1) Before making the preference decision—

(a) the chief executive must refer the application to the Land Court for it to make recommendations to the Minister about what the preference decision should be; and

(b) the Minister must consider the recommendations.

(2) The referral must be made by filing a notice in the approved form with the registrar of the Land Court.

(3) The referral starts a proceeding before the Land Court for it to make the recommendations.

(4) The parties to the proceeding are the applicant and the authority to prospect holder.

(5) In making the recommendations—

(a) the CSG assessment criteria must be considered; and

(b) section 318BD applies as if a reference in the section—

(i) to the Minister were a reference to the Land Court; and

(ii) to petroleum development preference were a reference to recommending petroleum development preference.

(6) The recommendations may also include recommendations about the conditions and term of the mining lease.

318BD Restrictions on giving preference

(1) Petroleum development preference, in whole or part, must not be given unless this section has been complied with.

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(2) Petroleum development preference may be given only if the Minister is satisfied of each of the following—

(a) on the basis of the submissions and the results of consultation lodged under sections 318AT and 318AX, it is either not commercially or technically feasible or it is unlikely that the applicant and the authority holder are able to make a future coordination arrangement about—

(i) coal or oil shale mining and any incidental coal seam gas mining under the proposed mining lease; and

(ii) petroleum production under any future petroleum lease for the land;

(b) that, having regard to the public interest, the public interest in the following would be best served by not granting a mining lease to the mining lease applicant first—

(i) coal or oil shale mining and any incidental coal seam gas mining;

(ii) petroleum production;

(c) if the petroleum is a brownfield petroleum resource—

(i) it is critical to the continuance of existing petroleum production or processing or the efficient use of infrastructure related to the production or processing; and

(ii) the applicant's proposed development plan is incompatible with the future development of the resource;

(d) if the petroleum is a greenfield petroleum resource—

(i) it is commercially viable; and

(ii) petroleum production will, if a petroleum lease is granted to the authority to prospect holder, start within 2 years after the grant of the lease.

(3) In this section—

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brownfield petroleum resource means petroleum associated with, or adjacent to, existing petroleum production or a processing operation under the Petroleum and Gas (Production and Safety) Act.

greenfield petroleum resource means petroleum not associated with, or adjacent to, existing petroleum production or a processing operation under the Petroleum and Gas (Production and Safety) Act.

Division 7 Process if preference decision is to give any preference to petroleum development

318BF Application of div 7

This division applies only if, under section 318BA, a preference decision is required and that decision was to give petroleum development preference for the whole or part of the land.

318BG Notice to applicant and authority to prospect holder

(1) The mining lease applicant and the authority to prospect holder must be given written notice of the preference decision.

(2) The notice must invite the authority to prospect holder to, within 6 months after the giving of the notice (the ***petroleum lease application period***), apply for a petroleum lease for—

(a) if the preference is for all of the land—all of the land; or

(b) if the preference is for part of the land—that part.

318BH Petroleum lease application for all of the land

(1) This section applies if the preference is for all of the land and, within the petroleum lease application period, the authority to prospect holder applies for a lease for all of the land.

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(2) A further step can not be taken to decide the mining lease application until after the petroleum lease application has been decided.

Note—

See, however, Petroleum and Gas (Production and Safety) Act, chapter 3, part 2, division 3 (Petroleum lease applications in response to Mineral Resources Act preference decision).

(3) If the decision on the petroleum lease application is to grant a petroleum lease for all of the land, the mining lease application is taken to have lapsed, unless the petroleum lease applicant has consented in writing to the application.

318BI Petroleum lease application for part of the land

(1) This section applies if the authority to prospect holder applies for a petroleum lease for part of the land within the petroleum lease application period.

(2) The mining lease applicant may, by notice lodged with the chief executive, amend the mining lease application so that a mining lease is only sought for all or part of the rest of the land.

(3) Unless the amendment is made, a further step can not be taken to decide the mining lease application until after the petroleum lease application has been decided.

Note—

See, however, the Petroleum and Gas (Production and Safety) Act, chapter 3, part 2, division 3 (Petroleum lease applications in response to Mineral Resources Act preference decision).

(4) If—

(a) the amendment has not been made; and

(b) the decision on the petroleum lease application is to grant a petroleum lease for part of the land;

the mining lease applicant may amend the mining lease application so that a mining lease is only sought for all or part of the rest of the land.

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Note—

See, however, section 318CB.

318BJ No petroleum lease application

If the authority to prospect holder does not apply for a petroleum lease for any of the land within the petroleum lease application period, the mining lease application may be decided.

Division 8 Deciding mining lease

318BK Application of div 8

This division applies if—

(a) the authority to prospect holder has not complied with section 318AW(a); or

(b) the authority to prospect holder has, under section 318AX, lodged a submission stating that the holder does not wish any petroleum development preference for the land; or

(c) the authority to prospect holder has not lodged any submission under section 318AX within the submission period; or

(d) under section 318BA, a preference decision is required and—

(i) the preference decision was not to give petroleum development preference for any of the land; or

(ii) the preference decision was to give petroleum development preference for the whole or part of the land and, after division 7 is complied with, the Minister decides, under section 271A, to grant a coal mining lease or an oil shale mining lease for the land.

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318BL Additional criteria for deciding conditions or term

(1) In making a decision as follows, regard must be had to the prescribed criteria—

(a) deciding conditions of the mining lease under section 276(1)(n);

(b) deciding the term of the lease under section 284.

(2) This section does not limit the power under section 276(1)(n) to determine conditions of the mining lease.

(3) In this section—

prescribed criteria means each of the following—

(a) the CSG assessment criteria;

(b) the effect of the mining lease on safe and efficient petroleum production under any adjacent lease;

(c) the effect on safe and efficient petroleum production under any future petroleum lease that arises from the authority to prospect.

318BM Power to determine relinquishment condition

(1) A condition of the mining lease determined under section 276(1)(n) may be that its holder is required, by a lodged notice, to relinquish a stated part or percentage of its area at stated times or intervals.

Note—

See, however, section 318CZ.

(2) A condition determined under subsection (1) is called a ***relinquishment condition***.

(3) A relinquishment under a relinquishment condition takes effect on the day after the notice is lodged.

(4) This section does not limit the power under section 276(1)(n) to determine conditions of the mining lease.

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318BN Publication of outcome of application

(1) After the Minister decides whether to grant the mining lease, the chief executive must publish a notice about the outcome of the application in the gazette or another publication the Minister considers appropriate.

(2) The notice must state—

(a) whether the Minister decided to grant, or not to grant, the mining lease; and

(b) if the decision was to grant—the conditions decided by the Minister; and

(c) if, under section 318BA, a preference decision is required and the preference decision was to give petroleum development preference for the whole or part of the land—the decision, and the reasons for it.

(3) However, if the chief executive considers that information in any condition is commercial-in-confidence, the chief executive may, instead of publishing the condition, publish a statement about the intent of the condition.

Part 3 Obtaining coal or oil shale mining lease over land in area of authority to prospect (by or jointly with, or with the consent of, authority to prospect holder)

318BO Application of pt 3

(1) This part applies if—

(a) land is in the area of an authority to prospect; and

(b) a person as follows wishes to apply for a coal mining lease or an oil shale mining lease for all or part of the land—

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(i) the holder of a coal or oil shale exploration tenement or prospecting permit;

(ii) a person who wishes to make the application jointly with the exploration tenement or prospecting permit holder; and

(c) either—

(i) the applicant is the authority holder; or

(ii) the authority holder has given written consent to the making of the application.

(2) However, this part does not apply if the land is also in the area of a petroleum lease and the same person holds the authority to prospect and the petroleum lease.

Note—

For the circumstances mentioned in subsection (2), see part 6.

318BP Additional requirements for making application

The application must include—

(a) a CSG statement; and

(b) a proposed development plan that complies with the initial development plan requirements; and

Note—

See part 9, division 2.

(c) other information that addresses the CSG assessment criteria.

318BQ Applications relating to petroleum lease and authority to prospect not held by same person

(1) This section applies if—

(a) a person to whom this part applies wishes to make an application to which this part applies for land in the area of each of the following—

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(i) the authority to prospect (the ***authority to prospect part***);

(ii) a petroleum lease (the ***petroleum lease part***); and

(b) the authority to prospect and the petroleum lease are not held by the same person.

Note—

If the authority to prospect and the petroleum lease are held by the same person, see part 5.

(2) The person may lodge separate mining lease applications for the authority to prospect part and the petroleum lease part.

(3) A separate application for the authority to prospect part, or the part of an application that relates to the authority to prospect part, must be decided under this part.

(4) A separate application for the petroleum lease part, or the part of an application that relates to the petroleum lease part, must be decided under part 5 or 6.

318BR Applications relating to other land

(1) This section applies if a person to whom this part applies wishes to make an application to which this part applies and the proposed application includes land (the ***other part***) not in the area of another petroleum tenure.

(2) The person may lodge a separate mining lease application for the other part.

(3) A separate application for the other part, or the part of an application that relates to the other part, must be decided under chapter 6, part 1.

318BT Priority for earlier petroleum lease application or proposed application

Part 2, division 5, applies for the mining lease application.

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318BU Additional criteria for deciding conditions or term

(1) In making a decision as follows, regard must be had to the conditions of the authority to prospect, any future development proposals of the authority to prospect holder and the likelihood of coordinated production of petroleum under a future petroleum lease—

(a) deciding conditions of the mining lease under section 276(1)(n);

(b) deciding the term of the lease under section 284.

(2) This section does not limit the power under section 276(1)(n) to determine conditions for the mining lease.

Part 4 Coal mining lease and oil shale mining lease applications in response to Petroleum and Gas (Production and Safety) Act preference decision

318BV Additional ground for refusing application

(1) This section applies if—

(a) a coal or oil shale mining lease application is made in response to an invitation given under the Petroleum and Gas (Production and Safety) Act, section 323; and

(b) the application is made within 6 months after the giving of the invitation.

Note—

For a coal or oil shale mining lease application not made within the 6 months, see the Petroleum and Gas (Production and Safety) Act, section 326 (No mining lease application).

(2) The Minister may refuse the application if satisfied the applicant has not, in a timely manner, taken any step in relation to the application required of the applicant under chapter 6 or this chapter.

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(3) Subsection (2) does not limit another ground for refusing the application under chapter 6 or this chapter.

Part 5 Obtaining coal or oil shale mining lease over land in area of petroleum lease (other than by or jointly with petroleum lease holder)

318BW Application of pt 5

(1) This part applies if a person wishes to apply for a coal mining lease or an oil shale mining lease for all or part of the land in the area of a petroleum lease.

(2) However, this part does not apply if—

(a) the person is the petroleum lease holder; or

(b) the application is to be made jointly with the holder.

Note—

For the circumstances mentioned in subsection (2), see part 6.

(3) If—

(a) the land is also in the area of an authority to prospect; and

(b) the same person holds the petroleum lease and the authority to prospect;

a reference in this part to the petroleum lease holder includes a reference to the authority to prospect holder.

Note—

If the petroleum lease and the authority to prospect are held by different persons, see section 318BQ.

318BX Additional requirements for making application

The application must include—

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(a) a CSG statement; and

(b) a proposed development plan that complies with the initial development plan requirements.

Note—

For requirements for proposed initial development plans, see part 9, division 2.

318BY Applications relating to other land

(1) This section applies if—

(a) a person to whom this part applies wishes to make an application to which this part applies; and

(b) the proposed application includes land (the ***other part***) in the area of an authority to prospect held by someone else.

(2) The person may lodge a separate mining lease application for the other part.

(3) A separate application for the other part, or the part of an application that relates to the other part, must be decided under part 2.

318C Notice to petroleum lease holder

The applicant must, within 10 business days after lodging the application, give the petroleum lease holder a copy of the application, other than the part of the application consisting of the statement mentioned in section 245(1)(o).

Note—

For confidentiality obligations of tenure holders or persons who have applied for a tenure, see part 10.

318CA Petroleum lease holder's obligation to negotiate

(1) The petroleum lease holder must, after receiving the copy of the application, use reasonable attempts to reach a coordination arrangement with the applicant about the

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following matters that provides the best resource use outcome without significantly affecting the parties' rights or interests—

(a) coal or oil shale mining and any incidental coal seam gas mining under the proposed mining lease;

(b) petroleum production under the petroleum lease for the land.

Note—

For the extent to which coal seam gas production is permitted under the coal or oil shale mining lease, see part 8, division 1.

(2) However, the obligation under subsection (1) applies only to the extent that a coordination arrangement is commercially and technically feasible for the petroleum lease holder.

Note—

For confidentiality obligations of tenure holders or persons who have applied for a tenure, see part 10.

318CB Restriction on issuing mining lease notice and additional requirements for grant

(1) Section 252A does not apply for the application, and the Minister can not under section 271A grant the mining lease until—

(a) the applicant has negotiated, with the petroleum lease holder, a proposed coordination arrangement (a ***relevant arrangement***) about the following matters—

(i) coal or oil shale mining and any incidental coal seam gas under the proposed mining lease;

(ii) petroleum production under the petroleum lease; and

(b) the Minister has approved the relevant arrangement; and

(c) there is a safety and health management system that applies for the proposed mining lease; and

(d) the petroleum lease holder has lodged a notice that the holder has agreed to the system.

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(2) Subsections (3) and (4) apply if the Minister is satisfied the applicant and the petroleum lease holder have, as required under section 318CA, made reasonable attempts to reach a relevant arrangement and—

(a) the petroleum lease holder has lodged a written notice stating there are no reasonable prospects of a relevant arrangement being made; or

(b) a relevant arrangement has not been lodged for approval by the Minister and the Minister considers the applicant and the petroleum lease holder have had a reasonable opportunity to make a relevant arrangement.

(2A) Despite subsection (1), a mining lease notice may be issued under section 252A for the application if the petroleum lease holder has consented to the making of the application and the issuing of the notice.

(3) A mining lease notice can not be issued for the application.

(4) The Minister may immediately decide to reject the application.

(5) In this section—

safety and health management system means—

(a) for a coal mining lease—a safety and health management system under the *Coal Mining Safety and Health Act 1999*; or

(b) for an oil shale mining lease—a safety and health management system under the *Mining and Quarrying Safety and Health Act 1999*.

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Part 6 Obtaining coal or oil shale mining lease over land in area of petroleum lease (by or jointly with petroleum lease holder)

318CC Application of pt 6

(1) This part applies if a person as follows wishes to apply for a coal mining lease or an oil shale mining lease for all or part of the land in the area of a petroleum lease—

(a) the petroleum lease holder;

(b) a person who wishes to make the application jointly with the holder.

(2) If—

(a) the land is also in the area of an authority to prospect; and

(b) the same person holds the petroleum lease and the authority to prospect;

a reference in this part to the petroleum lease holder includes a reference to the authority to prospect holder.

Note—

If the petroleum lease and the authority to prospect are held by different persons, see section 318BQ.

318CD Additional requirements for making application

The application must include—

(a) a CSG statement; and

(b) a proposed development plan that complies with the initial development plan requirements.

Note—

For requirements for proposed initial development plans, see part 9, division 2.

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318CE Applications relating to other land

(1) This section applies if—

(a) a person to whom this part applies wishes to make an application to which this part applies; and

(b) the proposed application includes land (the ***other part***) in the area of an authority to prospect held by someone else.

(2) The person may lodge a separate mining lease application for the other part.

(3) A separate application for the other part, or the part of an application that relates to the other part, must be decided under part 2.

318CG Additional criteria for deciding conditions

(1) In deciding conditions of the mining lease under section 276(1)(n), regard must be had to—

(a) the conditions of the petroleum lease; and

(b) the development plan for the petroleum lease.

(2) This section does not limit the power under section 276(1)(n) to determine conditions of the mining lease.

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Part 7 Additional provisions for coal and oil shale exploration tenements

Division 1 Grant of coal or oil shale exploration tenement in area of authority to prospect

318CH Provisions for coal or oil shale exploration tenement

(1) The *Petroleum Act 1923* and the Petroleum and Gas (Production and Safety) Act do not limit or otherwise affect the power under this Act to grant a coal or oil shale exploration tenement over land (the ***overlapping land***) in the area of an authority to prospect.

(2) However, an authorised activity for the coal or oil shale exploration tenement can not be carried out on the overlapping land if—

(a) carrying it out adversely affects the carrying out of an authorised activity for the authority to prospect; and

(b) the authorised activity for the authority to prospect has already started.

Division 2 Restriction on authorised activities on petroleum lease land

318CI Restriction

(1) If land is in the area of a coal or oil shale exploration tenement and a petroleum lease, an authorised activity for the tenement may be carried out on the land only if—

(a) the petroleum lease holder has agreed in writing to the carrying out of the activity; and

(b) a copy of the agreement has been lodged; and

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(c) the agreement is still in force.

(2) Subsection (1) does not apply, or ceases to apply, if the same person holds the tenement and the petroleum lease.

Division 3 Conditions

318CJ Notice of grant to authority to prospect holder or applicant

(1) This section applies if, when a coal or oil shale exploration tenement is granted, land in the area of the tenement is in the area of an authority to prospect or a proposed area under an authority to prospect application.

(2) It is a condition of the tenement that its holder must, within 20 business days after receiving notice of the grant, give the authority to prospect holder or the applicant written notice stating—

(a) that the tenement has been granted; and

(b) the tenement holder's name; and

(c) the term of the tenement.

318CK Compliance with obligations under Petroleum and Gas (Production and Safety) Act

If an obligation under the Petroleum and Gas (Production and Safety) Act, section 313 or 371, applies to a coal or oil shale exploration tenement holder, it is a condition of the tenement that the holder must comply with the obligation.

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Part 8 Additional provisions for coal mining leases and oil shale mining leases

Division 1 Entitlement to coal seam gas

318CL Application of pt 8

(1) This part applies to a person (the ***mining lease holder***) who holds a coal mining lease or an oil shale mining lease.

Note—

See, however, chapter 15, part 2, division 6.

(2) This division is subject to division 2 and the Common Provisions Act, section 138.

318CM Limited entitlement to mine coal seam gas

(1) The mining lease holder may mine coal seam gas in the area of the lease only if—

(a) the mining happens as a necessary result of coal or oil shale mining carried out under the mining lease; or

(b) the mining is necessary to ensure a safe mine working environment for coal or oil shale mining under the mining lease; or

(c) the mining is necessary to minimise the fugitive emission of methane during the course of coal mining operations.

(2) Coal seam gas mined, or proposed to be mined, under subsection (1) is called ***incidental coal seam gas***.

(3) To remove any doubt, it is declared that incidental coal seam gas includes coal seam gas in a goaf if the gas is mined, or proposed to be mined, under subsection (1).

(4) In this section—

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mine, for coal seam gas, includes extract, produce, release or dispose of the gas.

318CN Use that may be made under mining lease of incidental coal seam gas

(1) This section applies if the mining lease holder holds a coal mining lease.

(2) Subject to section 318CO, the mining lease holder may do the following in relation to incidental coal seam gas mined under section 318CM—

(a) use it beneficially for an authorised activity under the coal mining lease or another coal mining lease;

(b) process, store or transport it within the area of the coal mining lease, or within the area of another coal mining lease, to allow it to be used under paragraph (a);

(c) use it beneficially for an authorised activity under another resource authority;

(d) supply it to another entity;

(e) use it to generate power to supply to another entity;

(f) process, store or transport it within the area of the coal mining lease, or within the area of another resource authority, to allow it to be used under paragraph (c), (d) or (e).

Examples of uses of incidental coal seam gas authorised under paragraph (a) or (c)—

1 power generation for equipment used for an authorised activity under the coal mining lease or another resource authority

2 heating

Notes—

1 If the mining lease holder wishes to use the incidental coal seam gas in a way not authorised under subsection (2)(a) or (b), the holder may require an authority under the Petroleum and Gas (Production and Safety) Act. For example, a holder must apply for an authority under that Act if the holder wishes to transport the gas

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by pipeline outside the area of non-contiguous mining leases or utilise a natural underground reservoir.

2 If the mining lease holder wishes to use the incidental coal seam gas to generate power to supply to another entity, the holder must comply with the *Electricity Act 1994*.

(3) This section does not limit or affect a requirement or restriction under another Act.

(4) In this section—

supply includes sell.

318CNA Use that may be made under oil shale mining lease of incidental coal seam gas

(1) This section applies if the mining lease holder holds an oil shale mining lease.

(2) Subject to section 318CO, the mining lease holder may do the following in relation to incidental coal seam gas mined under section 318CM—

(a) use it beneficially for mining under the oil shale mining lease;

(b) process, store or transport it within the area of the oil shale mining lease to allow it to be used under paragraph (a).

Examples of uses of incidental coal seam gas authorised under paragraph (a)—

1 power generation for equipment used for mining under the oil shale mining lease

2 heating

(3) This section does not limit or affect a requirement or restriction under another Act.

(4) In this section—

mining, under the oil shale mining lease, includes mining for coal seam gas authorised under section 318CM.

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318CO Restriction on flaring or venting of incidental coal seam gas

(1) It is a condition of the mining lease that the mining lease holder must not flare or vent incidental coal seam gas mined under section 318CM(1) in the area of the mining lease unless the flaring or venting is authorised under this section.

(2) Flaring the incidental coal seam gas is authorised if it is not commercially or technically feasible to use it—

(a) for a coal mining lease—under section 318CN(2); or

(b) for an oil shale mining lease—under section 318CNA(2).

(3) Venting the incidental coal seam gas is authorised if—

(a) it is not safe to use the gas for a purpose mentioned in subsection (2) or to flare it; or

(b) flaring it is not technically practicable; or

(c) for incidental coal seam gas that is vented as or with mine ventilation air—it is not commercially practicable to use the air.

(4) Venting the incidental coal seam gas is also authorised if—

(a) it is being used, or is proposed to be used, under a greenhouse abatement scheme; and

(b) if subsection (1) were to apply, the direct or indirect benefit the mining lease holder would otherwise obtain because of the use of the gas under the scheme would be reduced.

(5) Subsection (6) applies, despite subsections (2) to (4), if—

(a) an oil shale mining lease is over land in an area of a petroleum lease (the ***overlapping land***); and

(b) incidental coal seam gas is, under section 318CM(1), mined from the overlapping land.

(6) Flaring or venting is authorised only if—

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(a) the mining lease holder has given the petroleum lease holder written notice that the gas is available to the petroleum lease holder; and

(b) the petroleum lease holder has either not responded or has refused to accept the gas within 20 business days after receiving the notice.

(7) In this section—

greenhouse abatement scheme means a scheme about the abatement of greenhouse gases prescribed by regulation.

Division 2 Provisions for mining coal seam gas from coextensive natural underground reservoirs

318CP Application of div 2

This division applies if a natural underground reservoir in the area of a coal mining lease or an oil shale mining lease extends to—

(a) the area of an adjacent coal mining lease, oil shale mining lease or petroleum lease (an ***adjacent lease***); or

(b) if a person has applied for a coal mining lease, oil shale mining lease or petroleum lease that will, if granted, be an adjacent lease—the area of the proposed lease.

Note—

See also the *Petroleum Act 1923*, section 52A (Application of 2004 Act provisions about coextensive natural underground reservoirs).

318CQ Coordination arrangement may be made about mining or production from reservoir

The mining lease holder and an adjacent lease holder, or proposed adjacent lease holder, may make a coordination arrangement that provides for the petroleum or coal seam gas that can, under this Act or the Petroleum and Gas (Production

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and Safety) Act, be mined or produced from the reservoir from within the area of the mining lease and the adjacent lease, or proposed adjacent lease.

Note—

For the making of coordination arrangements, see the Petroleum and Gas (Production and Safety) Act, chapter 2, part 8.

318CR Restriction on carrying out particular authorised activities

(1) The mining lease holder must not carry out a relevant activity for an adjacent lease or proposed adjacent lease unless—

(a) the adjacent lease holder, or the proposed adjacent lease holder, has consented in writing to the carrying out of the activity; or

(b) the activity is carried out under—

(i) a coordination arrangement mentioned in section 318CQ; or

(ii) a decision of the Land Court under section 318CS.

(2) However, if the adjacent lease was granted after the mining lease was granted and, when the adjacent lease was granted, the mining lease holder was carrying out the relevant activity, subsection (1) does not apply to the mining lease holder until the later of the following—

(a) 6 months after granting of the adjacent lease;

(b) if within the 6 months the mining lease holder applies to the Land Court under section 318CS—when the Land Court decides the application.

(3) In this section—

relevant activity, for an adjacent lease or proposed adjacent lease, means—

(a) the mining, under the mining lease, of coal seam gas that comes, or is likely to come, from the part of the reservoir that is in the area of an adjacent lease or the proposed adjacent lease; or

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(b) another authorised activity under the mining lease that physically adversely affects, or may physically adversely affect, the carrying out of authorised activities under an adjacent lease or the proposed adjacent lease.

318CS Dispute resolution by Land Court

(1) This section applies if—

(a) an adjacent lease holder, or the proposed adjacent lease holder, has not consented in writing to the carrying out of a relevant activity under section 318CR; and

(b) the mining lease holder and the adjacent lease holder or proposed adjacent lease holder (the ***parties***) have not made a coordination arrangement mentioned in section 318CQ.

(2) Either party may apply to the Land Court for it to decide—

(a) the amount or proportion of any of the following that, when mined or produced, is owned by each party—

(i) coal seam gas mentioned in section 318CR(1);

(ii) petroleum; and

(b) how the parties are to bear the costs of the mining or production; and

(c) how the mining or production is to be coordinated or monitored; and

Example for paragraph (c)—

fixing a distance from the boundary between the mining lease and the adjacent lease for mining coal seam gas from the reservoir

(d) remediation requirements, as prescribed under a regulation, in relation to the matters mentioned in section 318CR(3), definition *relevant activity*, paragraph (b).

(3) If the adjacent lease was granted after the mining lease was granted, the decision may apply from the grant of the adjacent lease.

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(4) In making the decision, the Land Court—

(a) must attempt to optimise mining under the mining lease and mining or production under the adjacent lease in a way that maximises the benefit for all Queenslanders; and

(b) may make the decision without having regard to the issue of who would, under another Act or law, have otherwise owned the petroleum.

(5) In considering the benefit to all Queenslanders, the Land Court must have regard to the public interest.

Division 3 Conditions

318CT Continuing requirement for coordination arrangement for particular coal or oil shale mining leases

(1) This section applies if—

(a) a coal mining lease or an oil shale mining lease is granted over land in the area of a petroleum lease and the application for the mining lease was not made by or jointly with the petroleum lease holder; or

(b) a coal mining lease holder or an oil shale mining lease holder is a party to a coordination arrangement mentioned in section 318DO.

(2) It is a condition of the mining lease that—

(a) its holder must continue to be party to a relevant coordination arrangement; and

(b) authorised activities for the mining lease must not be carried out if there is no relevant coordination arrangement.

(3) In this section—

relevant coordination arrangement means a coordination arrangement with the relevant petroleum lease holder about—

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(a) coal or oil shale mining and any incidental coal seam gas mining under the mining lease; and

(b) petroleum production under the petroleum lease.

318CU Obligation to measure and record coal seam gas mined

(1) It is a condition of each coal or oil shale mining lease that its holder must—

(a) use a meter to record the volume of coal seam gas mined in the area of the lease; and

Note—

Noncompliance with the conditions under this section may also be an offence. See the Petroleum and Gas (Production and Safety) Act, sections 15 (When petroleum is *produced*) and 801 (Petroleum producer's measurement obligations).

(b) comply with the provisions of the Petroleum and Gas (Production and Safety) Act, chapter 8, parts 1 and 2, to the extent the provisions are relevant to the meter and its use; and

(c) ensure—

(i) each designated CSG product mined is measured by a meter, in accordance with the relevant measurement scheme under the Petroleum and Gas (Production and Safety) Act for the meter; and

Note—

See the Petroleum and Gas (Production and Safety) Act, section 631 (What is a *meter*) and chapter 8, part 2 (Measurement schemes).

(ii) the meter complies with any requirements under the Petroleum and Gas (Production and Safety) Act; and

(iii) the measurement is made at the times and in the way required under the Petroleum and Gas (Production and Safety) Act; and

(iv) the measurement measures—

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(A) each designated CSG product separately to each other type of product mentioned in the Petroleum and Gas (Production and Safety) Act, section 801(2); and

(B) the percentage of methane in each designated CSG product measured.

(2) In this section—

meter means a meter as defined under the Petroleum and Gas (Production and Safety) Act, section 631.

318CW Compliance with obligation to negotiate with petroleum lease applicant

If the obligation under the Petroleum and Gas (Production and Safety) Act, section 349, applies to a coal mining lease holder or an oil shale mining lease holder, it is a condition of the mining lease that the holder must comply with the obligation.

318CZ Cessation of relinquishment condition for area not overlapping with area of authority to prospect

If—

(a) a coal mining lease or an oil shale mining lease contains a relinquishment condition; and

(b) all or part of the area of the mining lease ceases to be in the area of an authority to prospect (the ***relevant land***);

the condition ceases to apply for the relevant land.

Division 4 Amendment of relinquishment condition by application

318D Application of div 4

This division applies if a coal mining lease or an oil shale mining lease contains a relinquishment condition and all or

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part of the area of the mining lease is in the area of an authority to prospect.

318DA Conditions for applying to amend relinquishment condition

(1) The mining lease holder may apply for the amendment of the condition only if the applicant has, before making the application—

(a) made reasonable attempts to consult with the authority to prospect holder about—

(i) the proposed amendment; and

(ii) a proposed later development plan for the lease; and

(b) changed the proposed amendment and the proposed development plan to give effect to any reasonable proposal by the authority holder that will optimise—

(i) coal or oil shale or incidental coal seam gas mining under the amended mining lease; and

(ii) petroleum production under any future petroleum lease over the land.

(2) However, subsection (1)(b) applies only to the extent the proposal is commercially and technically feasible for the applicant.

318DB Authority to prospect holder's obligation to negotiate

The authority to prospect holder must, if asked by the mining lease holder, use reasonable attempts to reach an agreement with the mining lease holder, about the matters mentioned in section 318DA(1)(b), that provides the best resource use outcome without significantly affecting the parties' rights or interests.

Note—

For confidentiality obligations of tenure holders or persons who have applied for a tenure, see part 10.

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318DC Requirements for making application

The application must—

(a) be in the approved form; and

(b) state whether or not the development plan for the mining lease has been complied with; and

(c) if the development plan for the lease has not been complied with—state details of, and the reasons for, each noncompliance; and

(d) include a CSG statement; and

(e) include a proposed later development plan for the lease as amended under section 318DA; and

(f) include a statement about each of the following—

(i) the details of the consultation carried out under section 318DA(1)(a);

(ii) the results of the consultation;

(iii) whether the proposed development plan includes all provisions proposed by the authority to prospect holder under section 318DA(1)(b);

(iv) if the proposed development plan does not include a provision proposed by the authority holder—why it was not included;

(v) the applicant's assessment of the potential for the applicant and the authority holder to make a coordination arrangement about—

(A) coal or oil shale or incidental coal seam gas mining under the amended mining lease; and

(B) petroleum production under any future petroleum lease over the land that may be granted to the authority holder; and

(g) be accompanied by the fee prescribed under a regulation.

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318DD Notice of application

The applicant must immediately after making the application give the authority to prospect holder a copy of the application.

318DE Submissions by authority to prospect holder

(1) The authority to prospect holder may lodge submissions about the application.

Note—

See also part 10.

(2) However, the submissions may be lodged only within 20 business days after the holder is, under section 318DD, given a copy of the application.

(3) The submissions may include any of the following—

(a) information about all or any of the following—

(i) exploration carried out under the authority to prospect;

(ii) the results of the exploration;

(iii) the prospects for future petroleum production from the land;

(b) a proposal by the authority holder for petroleum production from the land;

(c) information relevant to the CSG assessment criteria.

Note—

For confidentiality obligations of tenure holders or persons who have applied for a tenure, see part 10.

(4) The holder must give the applicant a copy of the submissions.

(5) In deciding the application, regard must be had to the submissions.

318DF Minister may require further negotiation

(1) The Minister may, by written notice, require the applicant to conduct negotiations with the authority to prospect holder

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with a view to making changes of a type mentioned in section 318DA(1)(b).

(2) The applicant must use all reasonable attempts to comply with the requirement.

(3) If the Minister is reasonably satisfied the applicant has not complied with the requirement the Minister may decide to refuse the application.

318DG Deciding amendment application

(1) Before deciding to grant the application, the Minister must decide whether to approve the applicant's proposed later development plan for the mining lease.

(2) The application can not be granted unless the proposed plan has been approved.

(3) Part 9, division 4 applies for deciding whether to approve the proposed development plan.

(4) The matters that must be considered in deciding the application include each of the following—

(a) the CSG assessment criteria;

(b) whether the applicant has taken all reasonable steps to comply with the relinquishment condition;

(c) the effect of any approval of later development plans for the lease;

(d) any submissions under section 318DE lodged within the period mentioned in section 318DE(2).

(5) After the application has been decided, the applicant and the coal or oil shale exploration tenement holder must be given notice of the decision.

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Division 5 Restriction on amending other conditions

318DH Interests of relevant petroleum tenure holder to be considered

An amendment under section 294 of a condition of a coal mining lease or an oil shale mining lease must not be made unless the interests of any relevant petroleum tenure holder have been considered.

Division 6 Renewals

318DI General additional provisions for renewal application

(1) This section and section 318DJ contain additional provisions for an application to renew a coal mining lease or an oil shale mining lease.

Note—

For particular requirements for an application to renew a mining lease, see section 286.

(2) The application must—

(a) state whether the current development plan for the lease has been complied with; and

(b) if the development plan has not been complied with—state the details of, and the reasons for, each noncompliance; and

(c) include a proposed later development plan for the renewed lease, that complies with the later development plan requirements.

Note—

See section 318ED.

(3) The application can not be made after the lease has ended.

(4) If the application is made less than 6 months before the end of the term of the lease, the application must be accompanied by

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an amount that is 10 times the renewal fee prescribed under section 286(2)(b).

318DJ Applied provisions for renewal application

(1) The adopted provisions apply for any renewal application for a coal mining lease or an oil shale mining lease—

(a) as if the mining lease holder had lodged a proposed later development plan; and

(b) as if a reference in the adopted provisions—

(i) to the application were a reference to the renewal application; and

(ii) to a mining lease were a reference to a renewed mining lease; and

(iii) to a proposed development plan were a reference to a proposed later development plan; and

(c) with other necessary changes.

(2) In this section—

adopted provisions means—

(a) sections 318DZ and 318E; and

(b) part 9, division 4; and

(c) if all or part of the area of the mining lease is in the area of an authority to prospect and the applicant does not hold the authority to prospect—part 2, divisions 2 and 4; and

(d) if all or part of the area of the mining lease is in the area of an authority to prospect and the applicant holds the authority to prospect—part 3, other than sections 318BQ and 318BR; and

(e) if all or part of the land in the area of the mining lease is in the area of a petroleum lease and the mining lease holder is not a holder of the petroleum lease—part 5, other than section 318BY.

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318DK Mining lease taken to have development plan until renewal application decided

(1) This section applies until the happening of the following event if an application to renew a coal mining lease or an oil shale mining lease is made and the application complies with this part—

(a) if it is decided to renew the lease—the lease holder is given notice of the renewal;

(b) if it is decided not to renew the lease—the decision not to renew takes effect.

Note—

For when the decision takes effect, see section 318EH, as applied under section 318DJ.

(2) Despite the ending of the plan period for the current development plan for the lease—

(a) the mining lease is taken to have a development plan; and

(b) the holder may carry out any authorised activity for the lease.

Division 7 Consolidations

318DL Restriction on consolidation applications

A coal mining lease holder or an oil shale mining lease holder can not apply to consolidate the lease with another type of mining lease.

318DM Additional requirements for making consolidation application

(1) This section applies if an application under section 299 is made to consolidate coal mining leases or oil shale mining leases.

(2) The application must—

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(a) include a proposed development plan for the consolidated mining lease; and

(b) be accompanied by the fee prescribed under a regulation.

(3) The proposed plan must comply with the later development plan requirements.

Note—

For requirements for proposed initial development plans, see part 9, division 2.

(4) The fee prescribed under section 299 need not accompany the application.

318DN Deciding whether to approve proposed development plan

Sections 318EF to 318EH apply to a proposed development plan included in an application under section 299—

(a) as if the proposed plan were a proposed later development plan lodged under section 318EB; and

(b) as if a reference in the sections to the approval of a proposed later development plan were a reference to the proposed development plan for the consolidated lease; and

(c) with other necessary changes.

Division 8 Restriction on transfer or subletting

318DO Requirement for coordination arrangement to transfer or sublet mining lease in area of petroleum lease

(1) This section applies if land in the area of a coal mining lease or an oil shale mining lease is also in the area of a petroleum lease.

(2) The chief executive must not, under the Common Provisions Act, register a transfer or sublease of the mining lease unless

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the proposed transferee or sublessee and the petroleum lease holder are parties to a coordination arrangement about—

(a) coal or oil shale mining and any incidental coal seam gas under the mining lease; and

(b) petroleum production under the petroleum lease.

Note—

For matters about coordination arrangements, see the Petroleum and Gas (Production and Safety) Act, chapter 2, part 8.

Part 9 Development plans for coal mining leases and oil shale mining leases

Division 1 General provisions about development plans

318DP Function and purpose

(1) The development plan for a coal mining lease or an oil shale mining lease, or a proposed coal mining lease or an oil shale mining lease, (the ***relevant lease***) gives detailed information about the nature and extent of activities to be carried out under the lease.

(2) The development plan may—

(a) also relate to another coal or oil shale mining lease or proposed coal or oil shale mining lease if the other lease or proposed lease relates to the relevant lease; and

(b) provide that when the plan is approved it will replace any development plan for the other lease.

(3) The purposes of giving the information is to—

(a) allow resource management decisions to be made; and

(b) ensure appropriate development of minerals that, under section 234, are specified in the lease.

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318DQ Requirement to have development plan

It is a condition of each coal or oil shale mining lease that its holder must ensure there is a development plan for the lease.

Note—

The only 'development plan' for a coal or oil shale mining lease is its current initial or later development plan, as approved under this part. See the definition of that term in the dictionary. For the requirement to lodge a proposed later development plan and its approval, see division 4.

318DR Obligation to comply with development plan

It is a condition of each coal or oil shale mining lease that its holder must comply with the development plan for the lease.

Note—

See, however, chapter 15, part 2, division 6.

Division 2 Requirements for proposed initial development plans

318DS Operation of div 2

This division provides for requirements (the ***initial development plan requirements***) for a proposed initial development plan for a proposed coal or oil shale mining lease.

Note—

For additional requirements for proposed later development plans, see section 318ED.

318DT General requirements

(1) The proposed plan must provide for each of the following—

(a) an overview of the activities proposed to be carried out under the proposed mining lease during all of its proposed term;

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(b) for each year of the plan period—

(i) the nature and extent of activities proposed to be carried out under the proposed mining lease during the year; and

(ii) where the activities are proposed to be carried out;

(c) for each mineral the applicant proposes to mine under the proposed mining lease, each of the following—

(i) the location and an estimate of the resources of the mineral in all of the area, or proposed area, of the proposed mining lease;

(ii) the standards and procedures used to make the estimate;

(iii) the rate and amount of the proposed mining;

(iv) approximately when the proposed mining is to start;

(v) a schedule for the proposed mining during the plan period;

(d) maps that show the matters mentioned in paragraphs (b) and (c)(i), (iii) and (iv);

(e) any other information relevant to the criteria mentioned in section 318EF;

(f) reasons why the plan is considered appropriate;

(g) another matter prescribed under a regulation.

(2) A regulation may impose requirements about the form of the development plan.

(3) In this section—

year, of the plan period, means—

(a) the period starting on the day the plan period starts and ending on the first anniversary of that day; and

(b) each subsequent period of 12 months or less during the plan period, starting on each anniversary of that day and ending on—

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(i) the next anniversary of that day; or

(ii) if the plan period ends before the next anniversary—the day the plan period ends.

318DU Plan period

(1) The proposed plan must state its period.

(2) The period must not be longer than—

(a) if the term sought for the mining lease is less than 5 years from the granting of the mining lease—the term of the mining lease; or

(b) if the term sought for the mining lease is 5 years or more—5 years from the start of the term.

318DV Statement about interests of relevant petroleum tenure holder

The proposed plan must include a statement of how the effects on, and the interests of, any relevant overlapping or adjacent petroleum tenure holder have, or have not, been considered, having regard to—

(a) the main purposes of this chapter; and

(b) the CSG assessment criteria, other than the initial development plan requirements.

318DW Requirement to optimise use of incidental coal seam gas

The activities provided for under the proposed plan must seek to optimise the use of incidental coal seam gas in a safe and efficient way if it is commercially and technically feasible to do so.

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318DX Consistency with petroleum lease development plan and relevant coordination arrangement

If all or part of the land in the area of the proposed mining lease is in the area of a petroleum lease (the ***relevant land***), the proposed plan must, to the extent it applies to the relevant land, be consistent with—

(a) the development plan for the petroleum lease; and

(b) any coordination arrangement relating to the relevant land.

Division 3 Approval of proposed initial development plans

318DY Application of div 3

This division applies to all coal mining lease and oil shale mining lease applications.

318DZ Ministerial approval of proposed plan

(1) The Minister must decide whether to approve the applicant's proposed development plan for the proposed mining lease.

(2) If the proposed plan is not approved the application must be rejected.

318E Amendment of proposed plan before approval

(1) The applicant may, by lodged notice, amend the proposed development plan at any time before the Minister decides whether to approve the applicant's proposed development plan.

(2) The notice must be accompanied by the amended proposed plan.

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318EA Deciding whether to approve proposed plan

(1) The Minister may approve or refuse to approve the proposed development plan.

(2) The matters that must be considered in deciding whether to approve the proposed plan include each of the following—

(a) the potential of the area of the proposed mining lease for each of the following (the ***activities***)—

(i) mining;

(ii) each other purpose for which the lease is sought;

(b) the nature and extent of the activities;

(c) when and where the activities are proposed to be carried out;

(d) whether the mining of minerals that, under section 234, are sought to be specified in the lease will be optimised in the best interests of the State, having regard to the public interest;

(e) the CSG assessment criteria.

Division 4 Approval of proposed later development plans

318EB Obligation to lodge proposed later development plan

(1) It is a condition of each coal or oil shale mining lease that its holder must lodge a proposed later development plan for the mining lease as provided for under this section.

Note—

If the holder wishes to renew the lease, a proposed later development plan must be included in the renewal application. See section 318DI(2)(c).

(2) The condition is complied with only if the proposed later development plan—

(a) is lodged; and

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(b) complies with the later development plan requirements; and

(c) is accompanied by the relevant fee.

(3) A proposed later development plan must be lodged—

(a) at least 40, but no more than 100, business days before the end of the plan period for its current development plan (the ***current plan period***); or

(b) as soon as practicable after the holder proposes or becomes aware of a significant change to the nature and extent of an authorised activity that is not already dealt with under the current development plan for the lease; or

(c) within 20 business days after a coordination arrangement relating to the lease ends.

(4) However, if before the end of the current plan period, a decision is made not to approve a proposed later development plan lodged under subsection (3), the holder may, within the period, lodge another proposed later development plan.

(5) If the holder does not lodge any proposed later development plan before the end of the current plan period or if subsection (4) applies and the holder does not lodge another proposed later development plan within the current plan period—

(a) the holder must be given a notice requiring the holder to lodge a proposed later development plan for the lease within 40 business days after the giving of the notice; and

(b) the holder must comply with the requirement.

(6) In this section—

relevant fee, for the lodgement of the proposed plan, means—

(a) if the proposed plan is lodged within the time required under subsection (3)—the fee prescribed under a regulation; or

(b) if the proposed plan is lodged after the time required under subsection (3)—

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(i) if it is lodged under subsection (4)—nil; or

(ii) if it is not lodged under subsection (4)—an amount that is 10 times the prescribed fee.

318EC Consequence of failure to comply with notice to lodge proposed later development plan

(1) If a coal or oil shale mining lease holder does not comply with a requirement under section 318EB(5)(a), the lease is cancelled.

(2) However, the cancellation does not take effect until the holder is given a notice stating that the lease has been cancelled because of the operation of subsection (1).

318ED Later development plan requirements

(1) A proposed later development plan must—

(a) comply with the initial development plan requirements, as if the reference in section 318DU(2) to the term sought for the mining lease were a reference to the remaining term, or the renewed term, of the lease; and

Note—

For requirements for proposed initial development plans, see division 2.

(b) highlight any significant changes from the current development plan for the mining lease; and

(c) state whether the current development plan has been complied with; and

(d) if the current development plan has not been complied with—state the details of, and the reasons for, each noncompliance.

(2) For subsection (1), section 318DU applies as if a reference to the term sought for the mining lease is a reference to the term of the mining lease.

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(3) If the effect of the proposed plan is to significantly change an activity provided for under the current development plan, the proposed plan must also state reasons for the change.

(4) The requirements under subsection (1), as applied under subsection (2), and subsection (3) are the ***later development plan requirements***.

318EE Mining lease taken to have development plan until decision on whether to approve proposed later development plan

(1) This section applies until the happening of the following event if, under section 318EB, the holder lodges a proposed later development plan before the end of the plan period for the current development plan for the mining lease—

(a) if the proposed plan is approved—the holder is given notice of the approval;

(b) if approval of the proposed program is refused—when the refusal takes effect.

Note—

For when the decision takes effect, see section 318EH.

(2) Despite the ending of the plan period for the current development plan—

(a) the mining lease is taken to have a development plan; and

(b) the holder may carry out any authorised activity for the lease.

318EF Criteria for deciding whether to approve proposed plan

The matters that must be considered in deciding whether to approve the proposed later development plan include each of the following—

(a) the criteria under section 318EA for deciding whether to approve a proposed initial development plan;

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(b) the extent to which the current development plan for the mining lease has been complied with;

(c) the CSG assessment criteria;

(d) the effect of any approval of the proposed plan on any relinquishment condition for the mining lease;

(e) if the proposed plan provides for a significant change that is a cessation or reduction of mining or other purposes for which the mining lease is granted—

(i) whether the cessation or reduction is reasonable; and

(ii) whether the mining lease holder has taken all reasonable steps to prevent the cessation or reduction.

318EG Power to require partial surrender application

(1) This section applies if the proposed plan provides for a significant change that is a cessation or reduction of mining or other purposes for which the mining lease is granted.

(2) The Minister may approve the proposed plan, but—

(a) decide (a ***deferral decision***)—

(i) to defer the taking of effect of the approval until the mining lease holder applies under section 309 to surrender a stated part or percentage of the area of the lease on or before a stated day; and

(ii) that the decision to approve the proposed plan is replaced by a decision not to approve it if the surrender application is not made on or before the stated day; or

(b) impose a condition on the mining lease requiring its holder to apply under section 309 to surrender a stated part or percentage of the area of the lease at stated times or intervals.

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(3) The public interest must be considered before making a deferral decision or imposing the condition.

318EH Steps after, and taking effect of, decision

(1) On approval of the proposed later development plan, the chief executive must give the holder notice of the approval.

(2) For the following, the notice must be an information notice—

(a) a decision to refuse to approve the proposed plan;

(b) an approval of the proposed plan that, under section 318EG, is deferred;

(c) a decision under section 318EG(2)(b).

(3) An approval without any deferral under section 318EG(2)(a) takes effect when the holder is given the notice or, if the notice states a later day of effect, on that later day.

(4) A refusal does not take effect until the end the appeal period under section 318EI.

(5) In this section—

information notice means a notice stating—

(a) the reasons for the decision; and

(b) that the holder may appeal against the decision; and

(c) how to appeal.

Division 5 Appeals

318EI Right of appeal against cancellation, deferral or refusal

(1) This section applies if—

(a) under section 318DZ, it is decided not to approve a proposed development plan; or

(b) under section 318EC, it is decided to cancel the mining lease; or

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(c) it is decided not to approve the proposed later development plan; or

(d) under section 318EG, it is decided to defer an approval of the later development plan.

(2) The Petroleum and Gas (Production and Safety) Act, chapter 12, part 2, applies, with necessary changes, as if—

(a) the decision were mentioned in schedule 1, table 2 of that Act; and

(b) the schedule stated the Land Court as the appeal body for the decision; and

(c) a reference in that part to an information notice were a reference to a notice under section 318EH.

Part 10 Confidentiality of information

318EJ Application of pt 10

(1) This part applies if a tenure holder or a person who has applied for a tenure (the ***information-giver***) gives another tenure holder or a person who has applied for a tenure (the ***recipient***) information—

(a) that this chapter requires the information-giver to give the recipient, including, for example, information given to comply with section 318AW(a); or

(b) for the purposes of this chapter.

(2) However, this part applies subject to any agreement between the information-giver and the recipient about the information or its use.

(3) In this section—

information means information given verbally or in writing.

tenure means a coal or oil shale mining tenement or a petroleum tenure.

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318EK Confidentiality obligations

(1) The recipient must not disclose the information to anyone else, unless—

(a) the information is publicly available; or

(b) the disclosure is—

(i) to someone else whom the recipient has authorised to carry out the authorised activities for the recipient's coal or oil shale mining tenement or petroleum tenure; or

(ii) made with the information-giver's consent; or

(iii) expressly permitted or required under this or another Act; or

(iv) to the Minister.

(2) The recipient may use the information only for the purpose for which it is given.

318EL Civil remedies

If the recipient does not comply with section 318EK, a court of competent jurisdiction may order the recipient to pay the information-giver all or any of the following—

(a) compensation for any loss the information-giver incurred because of the failure to comply with the section;

(b) the amount of any commercial gain the recipient made because of the failure to comply with the section.

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Chapter 9 Provisions for geothermal tenures and GHG authorities

Part 1 Preliminary

318ELAM Relationship with chs 2 to 8 and ch 12, pt 1

(1) Requirements and restrictions under this chapter apply as well as any relevant requirements and restrictions under chapters 2 to 8 and chapter 12, part 1.

(2) If this chapter imposes a requirement for or a restriction on the granting of a mining lease, the mining lease can not be granted if the restriction applies or if the requirement has not been complied with.

(3) If a provision of this chapter conflicts with a provision of any of chapters 2 to 8 and chapter 12, part 1 the provision of this chapter prevails to the extent of the inconsistency.

(4) This chapter does not otherwise limit or affect the requirements of chapters 2 to 8 and chapter 12, part 1.

(5) Subsection (6) applies if this chapter imposes a requirement for or a restriction on the carrying out of an authorised activity for a mining tenement.

(6) Despite chapters 2 and 6, the activity is not an authorised activity for the mining tenement while the restriction applies or if the requirement has not been complied with.

318ELAN What is an *overlapping authority (geothermal or GHG)*

(1) An ***overlapping authority (geothermal or GHG)***, for a mining tenement, is any geothermal tenure or GHG authority all or part of the area of which is in the mining tenement's area.

(2) An ***overlapping authority (geothermal or GHG)***, for a proposed mining tenement, is any geothermal tenure or GHG

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authority all or part of the area of which will, if the proposed mining tenement is granted, be in the mining tenement's area.

318ELAO General provision about mining tenements for land subject to geothermal tenure or GHG authority

Subject to the other provisions of this chapter, chapters 2 to 8 and chapter 12, part 1, the Geothermal Act, GHG storage Act, a geothermal tenure or a GHG authority does not limit or otherwise affect—

(a) the power under this Act to grant a mining tenement over land in the area of an overlapping authority (geothermal or GHG) for the proposed mining tenement; or

(b) the carrying out of authorised activities for a mining tenement.

Part 2 Obtaining mining lease if overlapping tenure

Division 1 Preliminary

318ELAP Application of pt 2

This part applies if—

(a) a person (the ***applicant***) wishes to make a mining lease application; and

(b) there is an overlapping authority (geothermal or GHG) for the proposed mining lease; and

(c) the overlapping authority (geothermal or GHG) is a geothermal tenure or GHG tenure (the ***overlapping tenure***).

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Division 2 Requirements for application

318ELAQ Requirements for making application

(1) The mining lease application must include—

(a) a statement complying with section 318ELAR (an ***information statement***); and

(b) other information addressing the matters mentioned in subsection (2) (the ***assessment criteria***).

Note—

Chapter 8, part 9 also imposes development plan requirements for a proposed coal mining lease or oil shale mining lease.

(2) The assessment criteria are—

(a) the potential for the parties to make the following for the proposed mining lease—

(i) for a geothermal tenure—a geothermal coordination arrangement;

(ii) for a GHG tenure—a GHG coordination arrangement; and

(b) the economic and technical viability of the concurrent or coordinated carrying out of authorised activities for the proposed mining lease and the overlapping tenure; and

(c) the public interest.

318ELAR Content requirements for information statement

The information statement must assess—

(a) the likely effect of proposed activities under the proposed mining lease on the future carrying out of authorised activities for the overlapping tenure; and

(b) the technical and commercial feasibility of coordinating the proposed activities and the future carrying out of the authorised activities.

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Division 3 Consultation provisions

318ELAS Applicant's information obligation

(1) The applicant must within 10 business days after making the mining lease application give the overlapping tenure holder a copy of the application.

(2) If the Minister is reasonably satisfied the applicant has not complied with subsection (1), the Minister may refuse the mining lease application.

318ELAT Submissions by overlapping tenure holder

(1) The overlapping tenure holder may lodge submissions about the mining lease application (***holder submissions***).

(2) However, holder submissions may be lodged only within 4 months after the holder is given a copy of the application.

(3) Holder submissions may do all or any of the following—

(a) state that the holder does not object to the granting of the proposed mining lease;

(b) if the overlapping tenure is a geothermal permit or GHG permit—

(i) state that the holder does not wish any priority for the carrying out of authorised activities for any future lease that may arise from the permit (***overlapping authority priority***); or

(ii) include a proposal by the overlapping tenure holder for the authorised activities for which overlapping authority priority is sought;

(c) include information about authorised activities carried out under the overlapping tenure;

(d) include information relevant to the assessment criteria.

(4) The holder must give the applicant a copy of the holder submissions.

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Division 4 Resource management decision if overlapping permit

318ELAU Application of div 4

(1) This division applies if—

(a) the overlapping tenure is a geothermal permit or GHG permit (the ***overlapping permit***); and

(b) the overlapping permit holder has lodged holder submissions within 4 months after the holder was given a copy of the application; and

(c) the submissions state that the holder wishes overlapping authority priority.

(2) However, this division does not apply if under the Geothermal Act, chapter 5 or the GHG storage Act, chapter 4, overlapping authority priority has been given for any of the relevant land.

Note—

If this subdivision does not apply, the mining lease application proceeds immediately to a decision under chapter 6, part 1 as affected by division 7.

318ELAV Operation of div 4

This division provides for the Minister to make a decision (the ***resource management decision***) about whether—

(a) to grant the mining lease under section 271A; or

(b) to give any overlapping authority priority for all or part of the relevant land; or

(c) not to grant the mining lease and not to give any overlapping authority priority for all or part of the relevant land.

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318ELAW Criteria for decision

The Minister must consider the following in making the resource management decision—

(a) the information statement;

(b) the assessment criteria;

(c) the holder submissions;

(d) the public interest.

318ELAX Restrictions on giving overlapping authority priority

Overlapping authority priority may be given only if the Minister considers—

(a) either—

(i) it is unlikely the applicant and the overlapping permit holder will enter into—

(A) for a geothermal permit—a geothermal coordination arrangement; or

(B) for a GHG permit—a GHG coordination arrangement; or

(ii) an arrangement mentioned in subparagraph (i) for the proposed mining lease is not commercially or technically feasible; and

(b) the public interest would be best served by not granting a mining lease to the applicant first.

Division 5 Process if resource management decision is to give overlapping authority priority

318ELAY Application of div 5

This division applies only if, under division 4, a resource management decision is required and the decision is to give

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overlapping authority priority for all or part of the relevant land.

318ELAZ Notice to applicant and overlapping permit holder

(1) The chief executive must give the applicant and the overlapping permit holder written notice of the resource management decision.

(2) The notice must invite the overlapping permit holder to, within 6 months after the giving of the notice (the ***overlapping authority application period***), apply for a lease as follows (an ***overlapping lease***) for the land mentioned in subsection (3)—

(a) if the overlapping permit is a geothermal permit—a geothermal lease;

(b) if the overlapping permit is a GHG permit—a GHG lease.

(3) For subsection (2), the land is—

(a) if the overlapping authority priority is for all of the land—for all of the land; or

(b) if the priority is for part of the land—for that part.

318ELBA Overlapping lease application for all of the land

(1) This section applies if—

(a) the overlapping authority priority is for all of the land; and

(b) within the overlapping authority application period the overlapping permit holder applies for an overlapping lease for all of the land.

(2) A further step can not be taken to decide the mining lease application until after the overlapping lease application has been decided.

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Note—

The Geothermal Act, chapter 5, part 5 and the GHG storage Act, chapter 4, part 5 provide for refusal of the overlapping lease application if it is not pursued in a timely manner.

(3) If the decision on the overlapping lease application is to grant an overlapping lease for all of the land, the mining lease application is taken to have lapsed.

318ELBB Overlapping lease application for part of the land

(1) This section applies if the overlapping permit holder applies for an overlapping lease for part of the land within the overlapping authority application period.

(2) The person who made the mining lease application may amend it so that a mining lease is only sought for all or part of the rest of the land.

(3) Unless the amendment is made, a further step can not be taken to decide the mining lease application until after the overlapping lease application has been decided.

(4) If—

(a) the amendment has not been made; and

(b) the decision on the overlapping lease application is to grant an overlapping lease for part of the land;

the person who made the mining lease application may amend it so that a mining lease is only sought for all or part of the rest of the land.

Note—

If the mining lease application is not amended, see section 318ELBF (Application may be refused if no reasonable prospects of future geothermal or GHG coordination arrangement).

318ELBC No overlapping lease application

If the overlapping permit holder does not apply for an overlapping lease for any of the land within the overlapping

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authority application period, the mining lease application may be decided.

Division 6 Resource management decision not to grant and not to give priority

318ELBD Lapsing of application

The mining lease application is taken to have lapsed if—

(a) under division 4, a resource management decision is required; and

(b) the decision was not to grant the mining lease and not to give any overlapping authority priority for any of the relevant land.

Division 7 Deciding application

318ELBE Application of div 7

This division applies only if—

(a) the overlapping tenure holder has not lodged holder submissions within 4 months after the holder was given a copy of the application (the ***submission period***) or at all; or

(b) the overlapping tenure holder has lodged holder submissions within the submission period stating that the holder does not wish any overlapping authority priority; or

(c) under division 4, a resource management decision is required and—

(i) the resource management decision is not to give overlapping authority priority for any of the relevant land; or

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(ii) the resource management decision is to give overlapping authority priority for all or part of the relevant land and after division 5 has been complied with the Minister decides to grant a mining lease for the land.

318ELBF Application may be refused if no reasonable prospects of future geothermal or GHG coordination arrangement

(1) This section applies if—

(a) the Minister is satisfied the applicant and the overlapping tenure holder have made reasonable attempts to reach the following (a ***relevant arrangement***)—

(i) if the overlapping tenure is a geothermal permit—a proposed geothermal coordination arrangement;

(ii) if the overlapping tenure is a GHG permit—a proposed GHG coordination arrangement; and

(b) either—

(i) the overlapping tenure holder has lodged a written notice stating there are no reasonable prospects of a relevant arrangement being made; or

(ii) a relevant arrangement has not been lodged for approval by the Minister and the Minister considers the applicant and the overlapping tenure holder have had a reasonable opportunity to make a relevant arrangement.

(2) The Minister may decide to refuse the application.

318ELBG Additional criteria for deciding provisions of mining lease

(1) In making a decision as follows, regard must be had to the prescribed criteria—

(a) deciding conditions of the mining lease under section 276(1)(n);

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(b) deciding the term of the lease under section 284.

(2) In this section—

prescribed criteria means all of the following—

(a) the information statement;

(b) the assessment criteria;

(c) any holder submissions;

(d) the effect of the mining lease on the safe and efficient carrying out of authorised activities for the overlapping tenure;

(e) for an overlapping permit—the effect of the mining lease on the safe and efficient carrying out of authorised activities for any future lease that may arise from the permit.

318ELBH Publication of outcome of application

(1) After the Minister decides whether or not to grant the mining lease, the chief executive must publish a notice about the outcome of the mining lease application in or on at least 1 of the following—

(a) the gazette;

(b) the department's website;

(c) another publication the chief executive considers appropriate.

(2) The notice must state—

(a) the decision; and

(b) if the decision was to grant the mining lease—all conditions decided by the Minister; and

(c) if, under division 4, a resource management decision is required and the decision is to give overlapping authority priority for all or part of the land—the decision and the reasons for it.

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(3) However, if the chief executive considers information in a condition is commercial-in-confidence, the chief executive may instead of publishing the condition publish a statement about its intent.

Part 3 Priority to particular geothermal or GHG lease applications

318ELBI Earlier geothermal or GHG lease application

If—

(a) a mining lease application is made; and

(b) before the making of that application, an application (the ***other application***) was made for a geothermal lease or GHG lease (the ***other proposed lease***) but not decided; and

(c) the other application had not been decided before the making of the mining lease application; and

(d) the other proposed lease would, if it were granted, be an overlapping authority (geothermal or GHG) for the proposed mining lease;

the mining lease application must not be decided until the other application has been decided.

318ELBJ Proposed geothermal or GHG lease for which EIS approval given

(1) This section applies for a mining lease application if—

(a) before the making of the application, an approval under the Environmental Protection Act, chapter 3, part 2 was granted for the voluntary preparation of an EIS; and

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(b) the EIS is for a project that is, or includes, a proposed geothermal lease or GHG lease (the ***proposed lease***) for land the subject of the application.

(2) The application must not be decided until—

(a) if no application is made for the proposed lease within 1 year after the granting of the approval—the end of that year; or

(b) if an application is made for the proposed lease within that year—that application is decided.

318ELBK Proposed GHG lease declared a coordinated project

(1) This section applies for a mining lease application if—

(a) before the making of the mining lease application a coordinated project was declared; and

(b) the project is, or includes, a proposed geothermal lease or GHG lease (the ***proposed lease***) for land applied for in the application.

(2) The application must not be decided until—

(a) if no application is made for the proposed lease within 1 year after the making of the declaration—the end of that year; or

(b) if an application is made for the proposed lease within that year—that application is decided.

Part 4 Mining lease applications in response to invitation under Geothermal Act or GHG storage Act

318ELBL Application of pt 4

This part applies if—

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(a) a mining lease application is made in response to an invitation given because of a resource management decision under the Geothermal Act or the GHG storage Act; and

(b) the application is made within 6 months after the giving of the invitation.

318ELBM Minister may refuse application

The Minister may refuse the application if satisfied the applicant has not, in a timely manner—

(a) taken any step for the application required of the applicant under chapter 6, chapter 8 or this chapter; or

(b) satisfied the Minister about a matter that, under chapter 6, chapter 8 or this chapter, is required for the Minister to grant the mining lease.

Part 5 Additional provisions for particular mining tenements

Division 1 Restrictions on authorised activities for particular mining tenements

318ELBN Prospecting permit overlapping with geothermal or GHG lease

(1) This section applies if—

(a) land in the area of a prospecting permit is in the area of a geothermal lease or GHG lease; and

(b) the prospecting permit and the geothermal lease or GHG lease are not held by the same person.

(2) An authorised activity for the prospecting permit may be carried out on the land only if—

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(a) the geothermal lease or GHG lease holder has not, in the way required under subsection (3), objected to the carrying out of the activity; or

(b) if an objection under paragraph (a) has been made—the Minister has, under section 318ELBP, decided the authorised activity may be carried out.

Note—

For notice of authorised activities, see section 318ELBS.

(3) The objection must be written and given to the prospecting permit holder and lodged.

318ELBO Other overlapping authorities

(1) This section applies if land is in the area of a mining tenement and a geothermal tenure or GHG authority and section 318ELBN does not apply.

(2) An authorised activity for the mining tenement can not be carried out on the land if—

(a) carrying out the activity adversely affects the carrying out of an authorised activity for the geothermal tenure or GHG authority; and

(b) the authorised activity for the geothermal tenure or GHG authority has already started.

318ELBP Resolving disputes

(1) This section applies if, under section 318ELBN, a geothermal lease or GHG lease holder has objected to the carrying out of an authorised activity by a prospecting permit holder.

(2) This section also applies if—

(a) section 318ELBO applies to a mining tenement holder and a geothermal tenure or GHG authority holder; and

(b) there is a dispute between the holders about whether an authorised activity for the mining tenement can be carried out under that section.

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(3) Either of the parties may, by a notice in the approved form, ask the Minister to decide—

(a) for section 318ELBN—whether the authorised activity may be carried out under that section; or

(b) for section 318ELBO—whether the authorised activity may be carried out under that section.

(4) Before making the decision, the Minister must give the parties a reasonable opportunity to make submissions about the request within a reasonable period.

(5) The Minister must, after complying with subsection (4) and considering any submission made under that subsection, decide the matter and give the parties notice of the decision.

(6) The Minister's decision binds the parties.

(7) If the request is about a matter mentioned in subsection (1), the Minister may impose conditions on any decision that the authorised activity may be carried out.

(8) In this section—

parties means—

(a) for a request about a matter mentioned in subsection (1)—the prospecting permit holder and the geothermal lease or GHG lease holder; or

(b) for a request about a matter mentioned in subsection (2)—the mining tenement holder and the geothermal tenure or GHG authority holder.

Division 2 Provisions about conditions

318ELBQ Notice by particular mining tenement holders to particular geothermal tenure or GHG authority holders or applicants

(1) This section applies if—

(a) a mining tenement as follows is granted—

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(i) a mining claim;

(ii) a mineral development licence;

(iii) an exploration permit; and

(b) land in the mining tenement's area is in the area of, or in a proposed area under an application for, a geothermal tenure or GHG authority other than a geothermal lease or GHG lease.

(2) It is a condition of the mining tenement that its holder must within 20 business days after the holder receives notice of the grant of the tenement give the geothermal tenure or GHG authority holder or the applicant a written notice stating—

(a) the mining tenement has been granted; and

(b) the mining tenement holder's name; and

(c) the term of the mining tenement.

318ELBR Restriction on varying conditions of particular mining leases

If there is an overlapping authority (geothermal or GHG) for a mining lease, a condition of the mining lease must not be varied under section 294 unless the interests of the authority holder have been considered.

318ELBS Condition to notify particular authority holders of proposed start of designated activities

(1) This section applies to a mining tenement holder if there is either of the following (the ***other authority***) for the mining tenement—

(a) an overlapping authority (geothermal or GHG);

(b) a geothermal tenure or GHG authority sharing a common boundary with the mining tenement.

(2) Before the mining tenement holder first starts a designated activity in the other authority's area, the mining tenement

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holder must give the other authority holder at least 30 business days notice of the activity.

(3) A notice under subsection (2) must be written and state—

(a) when the designated activity is to start; and

(b) where the designated activity is to be carried out; and

(c) the nature of the activity.

(4) Before changing the land on which the designated activity is being carried out, the mining tenement tenure holder must give the other authority holder at least 30 business days notice in writing stating where the activity is to be carried out.

(5) Compliance with this section is a condition of the mining tenement.

(6) In this section—

designated activity means any authorised activity for the mining tenement, other than—

(a) an authorised activity for the mining tenement that is the same as or similar to an incidental activity under the Petroleum and Gas (Production and Safety) Act, section 33 or 112; or

(b) an activity only involving selecting places where other authorised activities for the mining tenement may be carried out.

318ELBT Requirement to continue geothermal or GHG coordination arrangement after renewal of or dealing with mining lease

(1) This section applies if—

(a) a mining lease has an overlapping authority (geothermal or GHG) that is a geothermal lease or GHG lease (the ***other lease***); and

(b) a geothermal coordination arrangement or GHG coordination arrangement applies to the mining lease; and

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(c) a renewal, transfer, consolidation or subletting takes place for the mining lease.

(2) It is a condition of the mining lease that its holder must continue to be a party to a GHG coordination arrangement for the mining lease while the other lease continues in force.

Chapter 11 Royalties

Part 1 Payment of royalty

320 Royalty return and payment

(1) The holder of a mining claim, mining lease or other authority under this Act or any other Act relating to mining who mines or allows to be mined mineral, whether or not the Crown has the property in the mineral, from the area of that mining claim, mining lease or other authority shall pay royalty as prescribed at the rate for the time being prescribed in respect of that mineral.

(2) Subsection (1) does not apply in respect of—

(a) coal, that is not the property of the Crown, mined under the authority of a mining lease granted or renewed or deemed to be granted or renewed under this Act for as long as there subsists an agreement made prior to the commencement of the *Mining Act Amendment Act 1976* with the owner of the coal or the owner's predecessor in title as to the royalty to be paid to the owner in respect of the coal mined or where such an agreement has, as provided in that agreement, been renewed, whether before or after the commencement of the *Mining Act Amendment Act 1976* for as long as there subsists a renewal of such an agreement; or

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(b) mineral, that is not the property of the Crown and is not referred to in paragraph (a), mined under the authority of a mining claim or mining lease granted or renewed under this Act for so long as there subsists an agreement made prior to the commencement of this Act with the owner of the mineral or the owner's predecessor in title as to the royalty to be paid to the owner in respect of the mineral mined or where such an agreement has, as provided in that agreement, been renewed, whether before or after the commencement of this Act for so long as there subsists a renewal of such an agreement.

(3) Where mineral is mined under the authority of a mining claim or a mining lease royalty payable under this chapter shall be payable—

(a) where the Crown has the property in the mineral—to the Crown; or

(b) in any other case—to the person who has the property in the mineral.

(4) The holder of a mining claim, mining lease or another authority under this Act or another Act about mining who mines mineral or allows mineral to be mined from the area of the mining claim, mining lease or other authority must, whether or not the State has property in the mineral, lodge royalty returns as required under a regulation.

(5) Unless a regulation otherwise provides, the holder of a mining claim or mining lease that authorises the mining of minerals for which royalty is or would be payable must lodge a royalty return whether or not mineral has been mined during the period of the return.

(6) Where, during a period in respect of which a royalty return is required to be lodged, mineral is mined by more than 1 person under a mining claim or mining lease or other authority under this Act or any other Act the holder shall ensure lodgement of the prescribed royalty return and payment of the prescribed royalty in respect of all mineral mined during the whole of the period under the mining claim, mining lease or other authority.

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(7) A person who mines mineral from land other than under a mining claim, mining lease or other authority mentioned in subsection (1) or (2), must, whether or not the State has the property in the mineral—

(a) lodge the royalty returns as required under a regulation; and

(b) pay royalty to the State or anyone else who has property in the mineral at the rate required under a regulation.

(8) The Minister may in the Minister's discretion determine that for the purpose of calculating royalty payable under this chapter, mineral has been mined under the 1 mining operation notwithstanding that that operation may be carried on under more than 1 authority granted under this or any other Act to mine that mineral.

321 Prescription of royalty

(1) Regulations made pursuant to section 417, may prescribe the royalties payable in respect of mineral mined from land to the Crown or other person who had the property in the mineral.

(2) Royalty may be prescribed whether the obligation to pay the royalty arises under this Act or under any agreement made with the State of Queensland or under any undertaking given by any person and shall be calculated at such rate or rates, in such manner and on such basis or bases as are prescribed by regulation.

(3) Without limiting the authority of the Governor in Council to regulate with respect to royalty, a rate of royalty and the manner and basis of its calculation—

(a) may be prescribed by reference to the quantity of mineral-bearing ore removed or by reference to the quantity of mineral mined;

(b) may be prescribed by reference to a proportion of the profits made from specified operations or from a particular operation or of the gross proceeds of the sale

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or disposal of the product of specified operations or of a particular operation;

(c) may vary as between royalties payable in respect of different minerals;

(d) may vary as between royalties payable by the same person or by different persons whether—

(i) in respect of the same mineral or different minerals;

(ii) in respect of mineral mined at the same place or at different places;

(iii) in respect of mineral mined at the same point in time or at different points in time;

(iv) in respect of mineral mined by the same method of mining or by different methods of mining;

(e) may be prescribed to apply generally throughout the State or in any prescribed locality of the State;

(f) may be prescribed in respect of all mining operations in the State or in respect of a particular mining operation or in respect of the mining operations of a particular person.

321A Regulation may impose civil penalties

(1) This section applies if a regulation provides for a person to make an election about the time and manner, or amount, of payment of royalty to the State.

(2) To deter exploitation of the provision, the regulation may impose a civil penalty—

(a) for contravention of a prescribed requirement; or

(b) in other prescribed circumstances.

(3) The amount of the civil penalty must be a prescribed amount or a prescribed percentage of royalty payable.

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323 Resolving inconsistency between differing royalty provisions

Where there is inconsistency between the requirements of the regulations and the provisions of any agreement made with the State of Queensland or of any undertaking given by any person (whether made or given before or after the commencement of the *Mining Royalties Act 1974* and whether or not such provisions have the force of law) as respects the royalty payable to the Crown in respect of mineral mined or mineral-bearing ore removed in any mining operation or as respects the manner or basis of its calculation, the requirements of the regulations shall prevail and the royalty payable and the manner and basis of its calculation shall be as prescribed by regulation, and any amount of royalty paid pursuant to such agreement or undertaking in relation to any period shall be offset against the amount of royalty duly payable pursuant to the regulations in relation to the same period.

324 Utilisation of security deposit towards royalty payments

(1) Where royalty is payable under this chapter by a person in respect of 1 mining operation (as determined by the Minister pursuant to section 320(8)) and is unpaid, that amount may be recovered by the Minister or, as the case may be, the chief executive by utilisation of security deposited by or on behalf of that person in respect of mining claims or mining leases or any of them under which the mining operation is carried on.

(2) This section shall not be construed to limit the right to utilise a security deposit for any purpose under any other provision of this Act.

325 Royalty return and payment upon transfer or surrender of mining claim or mining lease

(1) A person who transfers or surrenders, otherwise than for the purpose of a grant of a new mining claim or mining lease, a mining claim or a mining lease shall lodge with the document of transfer or surrender a royalty return with respect to

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mineral mined under the authority of the mining claim or mining lease for the current return period up to the last day of the month immediately preceding the lodgement of the transfer or surrender and shall lodge with the return the prescribed royalty in respect of that mineral.

(2) Nothing in subsection (1) shall abrogate the liability of a holder of a mining claim or mining lease at the time that minerals are mined thereunder to pay royalty on the minerals mined during the period from the date up to which the return required under subsection (1) is required up to the date the transfer or surrender thereof takes effect.

(3) Despite subsection (1)—

(a) the person is not required to lodge the royalty return if the royalty return has already been lodged under section 320(4); and

(b) the person is not required to pay the royalty if the person has already paid the royalty under section 320.

Part 2 Records and information

326 Requirement to keep proper records

(1) A person who is the holder of a mining claim or mining lease or who otherwise mines mineral from land must keep the records necessary to enable the royalty payable by the person to be ascertained.

Maximum penalty—100 penalty units.

(2) For subsection (1), the Minister may, by written notice given to a person, require the person to keep a particular record stated in the notice.

(3) The person must not fail, without reasonable excuse, to comply with the notice.

Maximum penalty—100 penalty units.

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326A Accessibility of records

A person who is required under this part to keep a record must keep the record in a way that it is able to be readily produced to the Minister if required by the Minister.

Maximum penalty—100 penalty units.

326B Form of records

A person who is required under this part to keep a record must keep the record—

(a) in the form of a document written in English with information about amounts expressed in Australian currency; or

(b) in a form that can be readily converted or translated into the form mentioned in paragraph (a).

Maximum penalty—100 penalty units.

326C Period for keeping records

A person who is required under this part to keep a record must keep it until the later of the following—

(a) 5 years has elapsed after it was made or obtained;

(b) 5 years has elapsed after the completion of the transaction or matter to which it relates.

Maximum penalty—100 penalty units.

326D Wilfully damaging records

(1) A person must not wilfully damage a record that is required to be kept under this part.

Maximum penalty—100 penalty units.

Note—

This provision is an executive liability provision—see section 412A.

(2) In this section—

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damage includes destroy.

326E Minister may require translation or conversion of document or information

(1) The Minister may, by written notice given to a person, require the person to translate or convert into a written document in the English language and Australian currency any document or information the Minister reasonably believes is relevant to the administration or enforcement of a royalty provision.

(2) The notice must state the reasonable time for compliance with the requirement.

(3) The person must not fail, without reasonable excuse, to comply with the requirement.

Maximum penalty—100 penalty units.

(4) If the person does not comply with the requirement, the Minister may have the document or information translated or converted.

(5) The costs and expenses incurred under subsection (4) are a debt payable to the State by the person and may be recovered by the State in a court of competent jurisdiction.

327A Minister may require royalty estimate

(1) The Minister may, by notice given to a person who is liable to pay a royalty under section 320, require the person to give the Minister a royalty estimate for the person for a stated future period.

(2) The royalty estimate must be a written return containing the information prescribed under a regulation about the estimated royalties payable by the person for the future period.

(3) The person must give the royalty estimate—

(a) in the way prescribed under a regulation; and

(b) no later than the day stated in the notice for giving the royalty estimate.

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Part 3 Royalty administration

Division 1 Preliminary

331 Definitions for pt 3

In this part—

assessment means a determination made under this part of a royalty-related amount payable by a person for a period, for which an assessment notice is given, and includes a reassessment.

assessment notice see section 331D(1).

default assessment see section 331A(2).

original assessment, for a royalty-related amount payable by a person for a period, means the first assessment by the Minister of the royalty-related amount payable by the person for the period.

reassessment means a determination made under this part of a variation of the royalty-related amount payable by a person for a period, for which an assessment notice is given.

royalty penalty amount see section 331E(1).

royalty-related amount means any of the following amounts—

(a) an amount of royalty;

(b) an amount of a civil penalty;

(c) an amount of unpaid royalty interest;

(d) a royalty penalty amount;

(e) if a prescribed fee must accompany a royalty return under a regulation—the amount of the prescribed fee.

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Division 2 Royalty assessments and reassessments

331A Assessment of royalty

(1) The Minister must make an assessment of a royalty-related amount payable by a person for each royalty return lodged by the person under this chapter, even if the royalty-related amount payable by the person is nil.

(2) Also, the Minister may, at any time, make an assessment of the royalty-related amount payable by a person for a period (a ***default assessment***), if the Minister is reasonably satisfied—

(a) a royalty-related amount is payable by the person for the period; but

(b) the person has not lodged a return for the period under this chapter.

331B Reassessment of royalty

(1) The Minister may make a reassessment of a royalty-related amount payable by a person for a period if the Minister is reasonably satisfied the original assessment or an earlier reassessment made for the period was not or is no longer correct.

(2) The Minister must make a reassessment of a royalty-related amount payable by a person for a period if a provision of this or another Act applies to require the reassessment.

(3) A reassessment increasing a royalty-related amount payable by a person for a period may be made at any time.

(4) A reassessment decreasing a royalty-related amount payable by a person for a period must be made within 5 years after the day the original assessment for the period was made (the ***reassessment period***).

(5) However, a reassessment decreasing a royalty-related amount payable by a person for a period may be made after the reassessment period if—

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(a) within the reassessment period, the person asks the Minister to reassess a royalty-related amount payable by the person for the period and the Minister agrees to make the reassessment; or

(b) the reassessment is required under a provision of this or another Act.

(6) A reassessment does not replace the previous assessment of a royalty-related amount payable by a person for a period, but merely varies it by—

(a) decreasing or increasing the royalty-related amount payable by the person; or

(b) changing the basis on which the royalty-related amount payable by the person is assessed.

331C Making assessments and default assessments in particular circumstances

(1) The Minister may make an assessment of a royalty-related amount payable by a person for a period on the available information the Minister considers relevant.

(2) Subsection (3) applies if—

(a) the Minister makes a default assessment of a royalty-related amount payable by a person for a period; or

(b) the information given by a person in a return or another document relating to the return is insufficient to enable the Minister to determine a royalty-related amount payable by the person for a period; or

(c) a person fails to give the Minister information or a document required to enable the Minister to determine a royalty-related amount payable by the person for a period.

(3) The Minister may make an assessment of the amount the Minister reasonably believes to be the royalty-related amount payable by the person for the period.

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(4) If an assessment of a royalty-related amount payable by a person is made under subsection (3) because the person failed to give a document mentioned in subsection (2)(c), the Minister may make an assessment as if the document were in existence and in the Minister's possession.

331D Notice of assessment or reassessment

(1) The Minister must give notice of an assessment or reassessment of a royalty-related amount payable by a person for a period (an ***assessment notice***) to the person.

(2) If the royalty-related amount already paid by the person for the period is more than the amount assessed or reassessed as payable for the period, the assessment notice must include the difference between those amounts.

(3) Subsection (4) applies if the royalty-related amount already paid by the person for the period is less than the amount assessed or reassessed as payable for the period.

(4) The assessment notice must include—

(a) the amount of the difference between the royalty-related amount paid and the royalty-related amount payable for the period (the ***liability difference***); and

(b) the day by which the liability difference must be paid (the ***due date***); and

(c) a statement that, under section 332, unpaid royalty interest is payable on the amount of the liability difference, to the extent it is comprised of royalty unpaid from time to time, for the period—

(i) starting on, and including, the day after the lodgement day; and

(ii) ending on, and including, the day the liability difference is paid in full; and

(d) the rate at which the interest is payable; and

(e) the royalty penalty amount for which the person is liable under section 331E.

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(5) The due date must be at least the following number of days after the day the Minister gives the notice to the person—

(a) for an assessment other than a reassessment or default assessment—7 days;

(b) for a reassessment or default assessment—28 days.

(6) In this section—

lodgement day, for a period, means the day a royalty return must be lodged by a person for the period (disregarding any extended time for lodging the return provided for by regulation).

Division 3 Unpaid royalty interest and royalty penalties

331E Liability for royalty penalty amount

(1) A person is liable to the State for an amount (***royalty penalty amount***) if—

(a) the Minister makes a default assessment under section 331A(2); or

(b) the Minister makes a reassessment and the original assessment was a default assessment under section 331A(2); or

(c) the royalty payable by the person for a period on a reassessment under section 331B is more than the royalty assessed as payable by the person on the original assessment, or an earlier reassessment, for the period.

(2) The royalty penalty amount must be assessed as follows—

(a) if subsection (1)(a) applies—an amount equal to 75% of the royalty payable;

(b) if subsection (1)(b) applies—an amount equal to 75% of the royalty payable under the reassessment;

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(c) if subsection (1)(c) applies and the royalty payable on the reassessment is more than the royalty assessed on the original assessment—an amount equal to 75% of the difference between the 2 amounts;

(d) if subsection (1)(c) applies and the royalty payable on the reassessment is less than the royalty assessed on the original assessment but more than the royalty assessed on an earlier reassessment—an amount equal to 75% of the difference between the royalty payable on the last reassessment and the lowest royalty assessed on an earlier reassessment.

(3) The Minister may increase the royalty penalty amount by not more than 20% of the royalty penalty amount assessed under subsection (2) if the Minister is reasonably satisfied the person has hindered or prevented the Minister from becoming aware of the nature and extent of the person's liability to pay royalty.

331F Royalty penalty amount not payable if proceeding for offence started

(1) This section applies if a person is liable to pay all or part of a royalty penalty amount because of a particular act or omission of the person.

(2) If a proceeding is started against the person for an offence under this Act that is constituted by the particular act or omission and the royalty penalty amount has not been paid, the royalty penalty amount is payable only if the Minister withdraws the proceeding.

(3) If a proceeding is started against the person for an offence under this Act that is constituted by the particular act or omission and the royalty penalty amount has been paid, the Minister must make a reassessment remitting the royalty penalty amount to nil.

(4) However, if the proceeding against the person is withdrawn, the Minister must make a reassessment to reinstate the royalty penalty amount remitted under subsection (3).

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331G Remission of royalty penalty amount

The Minister may remit the whole or part of a royalty penalty amount.

332 Unpaid royalty interest

(1) A person must pay interest (***unpaid royalty interest***) on the amount of royalty payable by the person to the State and unpaid from time to time (***unpaid royalty***).

(2) Unpaid royalty interest accrues on unpaid royalty—

(a) at the rate prescribed under a regulation; and

(b) daily, for the period starting on the day after the amount is required to be paid under this Act (the ***start date***) and ending on the day the unpaid royalty is paid in full, both days inclusive.

(3) A regulation may prescribe how unpaid royalty interest is worked out in particular cases or classes of cases, including, for example, how the interest is worked out if royalty is, under a regulation, payable in instalments.

(4) If the time for payment of royalty by a person is extended, the extension of time must be disregarded for working out the start date.

(5) The order of application of a payment under section 332A applies to determine the amount of unpaid royalty on which unpaid royalty interest accrues.

(6) The Minister may remit the whole or part of unpaid royalty interest payable under this section.

(7) If a regulation made under subsection (3) provides for unpaid royalty interest to be worked out if royalty is payable by instalments, and the Minister decides to remit to a person the whole or part of the interest under subsection (6) payable for an instalment, the Minister must give the person a notice stating the amount to be remitted.

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(8) However, subsection (7) only applies if the amount of unpaid royalty interest is to be remitted before an assessment notice is given for the remittance.

Division 4 Refunds and payments

332AA Refunds

(1) This section applies—

(a) if, on an assessment of a royalty-related amount payable by a person for a period made under section 331A, the royalty-related amount paid for the period is more than the royalty-related amount payable by the person for the period under the assessment (the difference being an ***excess amount***); or

(b) if, on a reassessment of a royalty-related amount payable by a person for a period made under section 331B, the royalty-related amount paid for the period is more than the royalty-related amount payable by the person for the period under the reassessment (the difference also being an ***excess amount***); or

(c) if—

(i) the royalty-related amount paid by a person for a period is otherwise more than the royalty-related amount payable by the person under this chapter (the difference also being an ***excess amount***); and

(ii) the Minister has given the person a notice stating the excess amount.

(2) The Minister must refund an excess amount mentioned in subsection (1) by—

(a) repaying the excess amount to the person; or

(b) crediting the excess amount against an amount the Minister is reasonably satisfied is, or will be, payable by the person for a royalty-related amount.

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(3) No interest is payable on the excess amount refunded.

332A Application of payments

A payment made by a person to the State for a royalty-related amount must be applied in the following order—

(a) first, a royalty-related amount, other than unpaid royalty interest or royalty;

(b) second, unpaid royalty interest;

(c) last, royalty.

333 Recovery of unpaid amounts

(1) This section applies if a person does not pay the whole or part of a royalty-related amount payable by the person under this Act.

(2) The unpaid amount is a debt payable to the relevant entity and may be recovered by the relevant entity in a court of competent jurisdiction.

(3) Subsection (2) applies in relation to a civil penalty or royalty penalty amount despite section 412(3).

(4) In this section—

relevant entity means—

(a) for royalty payable to a person other than the State—that person; or

(b) otherwise—the State.

333A Earlier time for payment of royalty-related amount

(1) This section applies despite any other provision of this Act relating to when a royalty-related amount is payable by a person for a period.

(2) The Minister may, in an assessment notice or notice given under this section, state an earlier date than the date a

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royalty-related amount would otherwise be payable under this Act (the ***ordinary due date***), if the Minister reasonably believes the amount may not be recoverable if the ordinary due date were to apply.

(3) The date stated in the notice mentioned in subsection (2) must not be a date before the notice is given.

Division 5 Offences

333B Failure to comply with information requirement or lodgement requirement

(1) A person must not fail, without reasonable excuse, to comply with an information requirement or a lodgement requirement.

Maximum penalty—100 penalty units.

Note—

This provision is an executive liability provision—see section 412A.

(2) In this section—

information requirement means a requirement under a royalty provision to give information to the Minister or a royalty investigator.

lodgement requirement means a requirement under a royalty provision to—

(a) lodge a document; or

(b) give a document to the Minister or a royalty investigator.

333C False or misleading documents

(1) A person must not give to the Minister or a royalty investigator a document containing information that the person knows, or should reasonably know, is false or misleading in a material particular.

Maximum penalty—100 penalty units.

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Note—

This provision is an executive liability provision—see section 412A.

(2) Subsection (1) does not apply to a person who, when giving the document—

(a) tells the Minister or royalty investigator of the extent to which the document is false or misleading; and

(b) to the extent the person has, or can reasonably get, the correct information—gives the correct information to the Minister or royalty investigator.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state the document was, without specifying which, 'false or misleading'.

333D False or misleading information

(1) A person must not state anything to the Minister or a royalty investigator that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

Note—

This provision is an executive liability provision—see section 412A.

(2) It is enough for a complaint for an offence against subsection (1), to state the statement made was 'false or misleading' to the person's knowledge, without specifying which.

333E Self-incrimination not a reasonable excuse for failure to comply with particular requirements

(1) This section applies if, under a royalty provision, a person is required by written notice given to the person to—

(a) give information or a document to the Minister or a royalty investigator; or

(b) lodge a document.

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(2) It is not a reasonable excuse for the person to fail to comply with the requirement because complying with the requirement might tend to incriminate the person.

(3) However, evidence of, or evidence directly or indirectly derived from, information or a document given or lodged in compliance with the requirement, by the person that might tend to incriminate the person is not admissible in evidence against the person in a criminal proceeding, other than a proceeding in which the falsity or misleading nature of the information or document is relevant.

333F Obligation to notify Minister if royalty under assessed

(1) A person must advise the Minister if the person becomes aware that—

(a) an assessment or reassessment of a royalty-related amount payable by the person for a period was not, or is no longer, correct; and

(b) the correct royalty-related amount is more than the amount stated in the assessment notice for the assessment or reassessment for the period.

(2) The person must comply with subsection (1) within 30 days after becoming aware of the matters mentioned in the subsection.

Maximum penalty—100 penalty units.

333G Obstruction of Minister or royalty investigator

A person must not, without reasonable excuse, obstruct—

(a) the Minister or a royalty investigator exercising a power under a royalty provision; or

(b) a person helping the Minister or an investigator exercising a power under a royalty provision.

Maximum penalty—100 penalty units.

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333H Impersonation of royalty investigator

A person must not pretend to be a royalty investigator.

Maximum penalty—40 penalty units.

Division 6 Obligations of administrators and garnishees

333I Definitions for div 6

In this division—

administrator, for a person's property, means another person who is—

(a) a receiver or receiver and manager of all or part of the person's property; or

(b) for a corporation's property—a liquidator; or

(c) for an individual's property—

(i) the individual's trustee in bankruptcy; or

(ii) the individual's personal representative.

garnishee see section 333L(1)(b).

garnishee amount see section 333L(3).

garnishee notice see section 333L(3).

liable person see section 333L(1)(a).

333J Particular administrators to notify Minister of appointment

(1) A person who is appointed as administrator for the property of a person by whom a royalty-related amount is payable must, before the required date, give written notice to the Minister of the appointment.

Maximum penalty—40 penalty units.

(2) For subsection (1), the ***required date*** is—

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(a) the date 14 days after the administrator becomes aware, or should reasonably have become aware, the royalty-related amount is payable by the person even if the extent of the liability is not then ascertainable; or

(b) the later date allowed by the Minister.

(3) However, notice is not required in the circumstances prescribed under a regulation.

333K Administrator's liability for payment

(1) The Minister has the same powers and remedies in relation to the administrator for the property of a person by whom a royalty-related amount is payable as the Minister would have in relation to the person.

(2) However, an administrator is liable for payment of a royalty-related amount payable by a person only to the extent of the realised value of all property that—

(a) the administrator has taken possession of as administrator; and

(b) was, at any time, available to the administrator for the payment of the royalty-related amount.

333L Collection of amounts from a garnishee

(1) This section applies if—

(a) under a royalty provision, a debt is payable by a person (the ***liable person***); and

(b) the Minister reasonably believes a person (the ***garnishee***)—

(i) holds or may receive an amount for or on account of the liable person; or

(ii) is liable or may become liable to pay an amount to the liable person; or

(iii) has authority to pay an amount to the liable person.

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(2) Subsection (1)(b) applies even though the liable person's entitlement to the amount may be subject to unfulfilled conditions.

(3) The Minister may, by written notice given to the garnishee (the ***garnishee notice***), require the garnishee to pay to the Minister by a stated date a stated amount (the ***garnishee amount***).

(4) Without limiting subsection (3), the garnishee notice may require the garnishee to pay to the Minister an amount out of each payment the garnishee is or becomes liable, from time to time, to make to the liable person.

(5) However, if, on the date for payment under the garnishee notice, the garnishee amount is not held for, or is not liable to be paid to, the liable person by the garnishee, the notice has effect as if the date for payment were immediately after the date the amount is held for, or is liable to be paid to, the liable person by the garnishee.

(6) The garnishee amount must not be more than the debt.

(7) The garnishee must comply with the garnishee notice unless the garnishee has a reasonable excuse.

Maximum penalty—40 penalty units.

(8) The Minister must give to the liable person—

(a) a copy of the garnishee notice; and

(b) details in writing of the liable person's debt to which the notice relates.

333M Duration of garnishee notice

The garnishee notice has effect until the garnishee amount is paid or the Minister, by written notice given to the garnishee, withdraws the notice.

333N Effect of discharge of debt on garnishee notice

(1) This section applies if—

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(a) the liable person's debt to which the garnishee notice relates is discharged, whether completely or partly, before the date for payment of the garnishee amount; and

(b) the discharge affects the amount to be recovered from the garnishee.

(2) The Minister must give written notice to the garnishee and the liable person—

(a) informing them of the extent of the discharge of the debt; and

(b) stating the amount payable under the garnishee notice is reduced accordingly; and

(c) if the liable person's debt is fully discharged—withdrawing the garnishee notice.

333O Effect of payment by garnishee

If the garnishee pays an amount to the Minister under a garnishee notice, the garnishee—

(a) is taken to have acted under the authority of the liable person and all other persons concerned; and

(b) if the garnishee is under an obligation to pay an amount to the liable person—is to be taken to have satisfied the obligation to the extent of the payment.

Division 7 Use of approved information system for particular decisions

333P Approved information system

The Minister may approve an information system for a royalty provision.

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333Q Minister may arrange for use of an approved information system to make particular decisions

(1) The Minister may arrange for the use of an approved information system for any purposes for which the Minister may make a relevant decision under a royalty provision.

(2) A relevant decision made by the operation of an approved information system under an arrangement made under subsection (1) is taken to be a decision made by the Minister.

(3) In this section—

relevant decision means a decision that does not involve the exercise of the Minister's discretion.

Division 8 Evidence

333QA Application of division

This division applies to a proceeding relating to a royalty-related amount, whether the proceeding is under this Act or another law.

333QB Evidentiary certificates

A certificate purporting to be signed by the Minister stating any of the following matters is evidence of the matter—

(a) on a stated date—

(i) a stated person was liable to pay, or paid, a stated amount; or

(ii) a stated notice was published in a stated way; or

(iii) a stated person made, gave or executed a stated document; or

(iv) an assessment was made; or

(v) a stated document was given to a stated person in a stated way; or

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(vi) a stated document or information was not received by a stated person; or

(vii) a stated person had or had not done a stated thing required to be done under this Act;

(b) the details of an assessment;

(c) a stated person is authorised to conduct a stated proceeding for the Minister;

(d) a stated document is a copy of, or part of, another document.

Division 9 Giving documents

333QC Application of division

This division applies if a royalty provision requires or permits a document to be given to a person, whether the expression 'give', 'lodge', 'notify' or 'advise' or another expression having a similar meaning is used.

333QD Ways of giving documents to Minister

A document is taken to be given to the Minister under a royalty provision if—

(a) it is left at the office of the department with a public service employee engaged in the administration of the royalty provisions; or

(b) it is sent by post or facsimile to the office of the department; or

(c) it is given under the *Electronic Transactions (Queensland) Act 2001* to a public service employee engaged in the administration of the royalty provisions, including by using an approved information system; or

(d) it is given in a way prescribed by regulation.

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333QE When document given to Minister

(1) A document is taken to be given to the Minister under a royalty provision—

(a) if it is given in the way mentioned in section 333QD(a)—when it is actually received by the public service employee with whom it is left; or

(b) if it is sent by facsimile—on the day the facsimile is sent; or

(c) if it is given under the *Electronic Transactions (Queensland) Act 2001*—

(i) using an approved information system—at the time the communication enters the approved information system; or

(ii) otherwise—at the time of receipt under that Act; or

(d) if it is given in the way mentioned in section 333QD(d)—at the time prescribed by regulation.

Note—

For the time of giving a document by post, see the *Acts Interpretation Act 1954*, section 39A(1)(b).

(2) However, if under subsection (1) the document is given on a day that is not a business day, or after 5p.m. on a business day, the document is taken to be given to the Minister on the following business day.

(3) Subsection (2) does not apply to a document given to the Minister using an approved information system.

333QF When lodgement requirement complied with

(1) A lodgement requirement is complied with only if—

(a) all documents required to be given under the requirement have been given by the date for complying with the requirement; and

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(b) for a document that must be given in an approved form under the requirement—the form contains enough information for the purpose for which it is given.

(2) In this section—

lodgement requirement see section 333B(2).

333QG Documents may be given to agents of royalty payers

(1) A document is taken to be given by the Minister to a royalty payer if it is given to an agent of the royalty payer with apparent authority to be given the document.

(2) In this section—

royalty payer means a person required to pay royalty under section 320.

333QH Giving document if more than 1 person liable

(1) A document is taken to be given by the Minister to all persons who are liable to pay a royalty-related amount for a royalty return period if it is given to 1 person who is liable to pay the amount.

(2) However, a regulation may declare that subsection (1) does not apply to a person in stated circumstances.

(3) A regulation may be made under subsection (2) only if it is not reasonable or practicable for the document to be taken to be given to a person.

(4) Subsections (2) and (3) do not prevent the Minister giving the document to the person to whom the regulation applies.

333QI Ways document given by Minister

(1) A document given by the Minister to a person under a royalty provision is properly given if it is—

(a) given under the *Acts Interpretation Act 1954*, part 10; or

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(b) sent by email to the person's email address as given by the person to a public service employee engaged in the administration of the royalty provisions; or

(c) made available to the person using an approved information system in the circumstances prescribed by regulation; or

(d) given in another way prescribed by regulation.

(2) Without limiting subsection (1)(a), the document is properly given under that subsection by leaving it at or sending it to an address, whether the Minister leaves it at or sends it to the address for the person recorded in the register, or another address for the person.

333QJ When document given by Minister

(1) A document is taken to be given by the Minister to a person—

(a) if it is sent by facsimile—on the day the facsimile is sent; or

(b) if it is sent by email—on the day the email is sent; or

(c) if it is made available using an approved information system or given in a way prescribed by regulation—on the day prescribed.

Note—

For the time of giving a document by post, see the *Acts Interpretation Act 1954*, section 39A(1)(b).

(2) However, if under subsection (1), the document is given after 5p.m. on a particular day, the document is taken to be given to the person on the following business day.

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Part 3A Investigations relating to royalty provisions

Division 1 Preliminary

333R Powers to be exercised only for administering and enforcing royalty provisions

A power conferred on the Minister or a royalty investigator under this part may be exercised only for the administration or enforcement of a provision of this Act administered by the Minister responsible for administering the *Taxation Administration Act 2001* (a ***royalty provision***).

Note—

On the commencement of this section, the Minister responsible for administering the *Taxation Administration Act 2001* was responsible for administering this Act to the extent that it was relevant to royalties.

Division 2 Royalty investigators

333S Appointment

The Minister may appoint an appropriately qualified public service employee as a royalty investigator.

333T Appointment conditions and limit on powers

(1) A royalty investigator holds office on any conditions stated in—

(a) the royalty investigator's instrument of appointment; or

(b) a signed notice given to the royalty investigator; or

(c) a regulation.

(2) The instrument of appointment, a signed notice given to the royalty investigator or a regulation may limit the royalty investigator's powers under this part.

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(3) In this section—

signed notice means a notice signed by the Minister.

333U Issue of identity card

(1) The Minister must issue an identity card to each royalty investigator.

(2) The identity card must—

(a) contain a recent photo of the royalty investigator; and

(b) contain a copy of the royalty investigator's signature; and

(c) identify the person as a royalty investigator under this Act; and

(d) state an expiry date for the card.

(3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

333V Production of identity card

(1) In exercising a power mentioned in the *Taxation Administration Act 2001*, part 7, division 2, subdivision 3 or 4 as applied under division 3 of this Act in relation to a person, a royalty investigator must—

(a) first produce his or her identity card for the person's inspection before exercising the power; or

(b) have the identity card displayed so it is clearly visible to the person when exercising the power.

(2) However, if it is not practicable to comply with subsection (1), the royalty investigator must produce the identity card for the person's inspection at the first reasonable opportunity.

(3) For subsection (1), a royalty investigator does not exercise a power in relation to a person only because the investigator has entered a place as mentioned in the *Taxation Administration*

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Act 2001, section 90(1)(b) or (2), as applied under division 3 of this Act.

333W When royalty investigator ceases to hold office

(1) A royalty investigator ceases to hold office if any of the following happens—

(a) the term of office stated in a condition of office ends;

(b) under another condition of the office, the royalty investigator ceases to hold office;

(c) the royalty investigator's resignation under section 333X takes effect.

(2) Subsection (1) does not limit the ways a royalty investigator may cease to hold office.

(3) In this section—

condition of office means a condition on which a royalty investigator holds office under section 333T.

333X Resignation

(1) A royalty investigator may resign by signed notice given to the Minister.

(2) However, if holding office as a royalty investigator is a condition of the investigator holding another office, the investigator may not resign as a royalty investigator without resigning from the other office.

333Y Return of identity card

A person who ceases to be a royalty investigator must return the person's identity card to the Minister within 21 days after ceasing to be a royalty investigator unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

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Division 3 Powers of royalty investigators

333Z Application of Taxation Administration Act 2001, pt 7

(1) The Minister and a royalty investigator have and may exercise—

(a) the same powers as those conferred on the commissioner or an investigator under the *Taxation Administration Act 2001*, part 7, division 2, subdivisions 2 to 6 (the ***taxation investigation provisions***); and

Note—

Under the *Acts Interpretation Act 1954*, section 7, a reference to a provision of a law includes a reference to the statutory instruments made or in force under the provision.

(b) another power conferred on a royalty investigator under this part.

(2) The taxation investigation provisions apply, with all necessary changes, including those mentioned in subsection (3), and with the modifications made under subsection (4)—

(a) to and in relation to the exercise of the powers under the taxation investigation provisions by the Minister or a royalty investigator; and

(b) to and in relation to a person in relation to whom the powers are exercised.

(3) For subsection (2), necessary changes to the taxation investigation provisions include the following, subject to the modifications made under subsection (4)—

(a) a reference to a tax law were a reference to a royalty provision;

(b) a reference to an investigator were a reference to a royalty investigator;

(c) a reference to an identity card were a reference to an identity card issued under division 2;

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(d) a reference to the commissioner were a reference to the Minister, other than the reference in the *Taxation Administration Act 2001*, section 106;

(e) a reference in the *Taxation Administration Act 2001*, section 88(7) to a taxpayer were a reference to a person required to pay royalty under section 320;

(f) the reference in the *Taxation Administration Act 2001*, section 106 to the commissioner were a reference to the State.

(4) For subsection (2), the taxation investigation provisions are modified in the following ways—

(a) the *Taxation Administration Act 2001*, part 7, division 2, subdivision 5 applies subject to section 333ZA; and

(b) the *Taxation Administration Act 2001*, section 99(2) does not apply.

(5) To remove any doubt, it is declared that an offence against a TAA offence provision as applied by subsection (2) committed by a person is an offence committed by the person under this Act.

(6) In this section—

TAA offence provision means—

(a) the *Taxation Administration Act 2001*, section 88(6); or

(b) the *Taxation Administration Act 2001*, section 96(2) or (4).

333ZA Forfeiture of thing seized for testing

(1) A royalty investigator may carry out, or arrange to have carried out, scientific or other tests on a sample of a thing the royalty investigator reasonably considers is a mineral, seized under the *Taxation Administration Act 2001*, part 7, division 2, subdivision 5 as applied by section 333Z(2).

(2) The testing may have the effect of destroying the thing.

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(3) The *Taxation Administration Act 2001*, section 99(1) does not apply in relation to a thing seized and tested under this section.

Part 4 Confidentiality

334A Definitions for pt 4

In this part—

confidential information means information disclosed to, obtained by, or otherwise held by, a public official under or in relation to this chapter.

public official means a person who is, or has been, a public service employee or other person, performing functions under or in relation to the administration or enforcement of this Act.

334B Disclosure of confidential information

(1) A public official must not disclose confidential information acquired by the public official in the public official's capacity to anyone else other than under this part.

Maximum penalty—100 penalty units.

(2) The Minister may disclose personal confidential information—

(a) to the person to whom the information relates or, if either of the following apply, to someone else—

(i) with the consent, express or implied, of the person to whom the information relates;

(ii) the Minister reasonably believes is acting for the person to whom the information relates; or

(b) if the disclosure is expressly permitted or required under another Act; or

(c) to a person for the administration or enforcement of—

(i) a royalty law; or

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(ii) a tax law or another law administered by the revenue commissioner; or

(iii) another law about public revenue; or

(d) in relation to any legal proceeding under this Act; or

(e) to an officer of the department for—

(i) developing or monitoring revenue policies; or

(ii) administering the *Financial Accountability Act 2009*, section 21.

(3) Also, if the Minister becomes aware, from information obtained or held by the Minister in the course of administering this Act, of a particular offence or suspected offence (whether against this Act or another law), the Minister may disclose confidential information about the offence or suspected offence to a member of the Queensland Police Service or the Australian Federal Police for an investigation or proceeding (including for starting an investigation or proceeding).

(4) Also, the Minister may disclose confidential information, other than personal confidential information, to any person, or for any purpose, the Minister is satisfied is appropriate in the circumstances.

(5) This section does not create a right in any person to be given confidential information.

(6) In this section—

personal confidential information, for a person, means confidential information that—

(a) identifies, or is likely to identify, the person; or

(b) discloses matters about the person's affairs.

revenue commissioner means the Commissioner of State Revenue appointed under the *Taxation Administration Act 2001*, section 7(2).

royalty law means this Act or another Act administered by the Minister providing for payment of a royalty.

tax law see the *Taxation Administration Act 2001*, schedule 2.

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334C Other obligations about disclosure and use of confidential information

(1) If—

(a) a person knowingly acquires confidential information without lawful authority; or

(b) a person receives confidential information that the person knows, or ought reasonably to know, is confidential information;

the person must not disclose the information to anyone else unless the disclosure is permitted under this part.

Maximum penalty—100 penalty units.

Example for subsection (1)(a)—

A person employed by a contractor engaged by the State to clean the department's offices reads a document in the Minister's office containing confidential information.

Example for subsection (1)(b)—

A person, other than the addressee of a fax, receives the fax that states the information in it is confidential and is intended for the addressee's purposes only.

Note—

This provision is an executive liability provision—see section 412A.

(2) If, under section 334B, the Minister discloses confidential information to a person, the person may disclose the information—

(a) to the extent necessary to enable the person to exercise a power or perform a function conferred on the person under a law for the administration or enforcement of the law; or

(b) for the purpose for which it was disclosed under the section; or

(c) to anyone else or for any purpose if the information relates to the person.

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334D Refusal of disclosure of particular information

(1) A person engaged in the administration or enforcement of this Act can not be compelled to disclose to a court or QCAT in a proceeding, or to a party to the proceeding—

(a) confidential information; or

(b) whether or not the person has received particular confidential information; or

(c) the identity of the source of particular confidential information.

(2) Subsection (1) does not apply to a proceeding for the administration or enforcement of this Act.

Chapter 12 Provisions about particular areas, matters or mining tenements

Part 1 Provisions for McFarlane oil shale deposit

Division 1 Preliminary

334E Application of pt 1

(1) Subject to subsection (3), this part applies to all of the following land from when this section commences to 17 August 2028 (the ***moratorium period***)—

(a) land in the area of mineral development licence 202;

(b) land in the area of exploration permits 3520 and 16668;

(c) the area of exploration permit application 16748;

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(d) land prescribed under a regulation (***prescribed land***).

(2) A regulation may be made under subsection (1)(d) only if the land to which this section applies will, after the making of the regulation, be a contiguous parcel of land.

(3) This part applies to prescribed land only from the commencement of the regulation prescribing the oil shale mining tenement.

334F What is an *oil shale mining tenement*

(1) An ***oil shale mining tenement*** is a mining tenement granted for oil shale.

(2) Subsection (1) applies whether or not the mining tenement is also granted for another mineral.

334G Relationship with other provisions of this Act

(1) This part applies despite any other provision of this Act and the conditions or other provisions of an oil shale mining tenement.

(2) If a provision of this part conflicts with another provision of this Act, the provision of this part prevails to the extent of the inconsistency.

Division 2 Moratorium provisions

334H Prohibition on granting oil shale mining tenements

(1) During the moratorium period an oil shale mining tenement can not be granted for the land.

(2) To remove any doubt, it is declared that subsection (1) does not apply for a renewal that takes place because of section 334O.

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334I Suspension of oil shale activities

(1) This section applies to an activity relating to oil shale (an ***oil shale activity***) that would, other than for this section, have been an authorised activity for an oil shale mining tenement for the land.

(2) Subject to section 334J—

(a) during the moratorium period, any right to carry out the oil shale activity is suspended; and

(b) during the suspension—

(i) the oil shale activity is not an authorised activity for the mining tenement; and

(ii) for section 402, the oil shale activity is taken not to be authorised under this Act or any other Act relating to mining.

334J Access rights for particular activities

(1) During the moratorium period, the holder of an oil shale mining tenement for the land may—

(a) enter the area of the mining tenement to carry out rehabilitation or environmental management mentioned in the Common Provisions Act, section 72B; and

(b) if the mining tenement is not a prospecting permit or exploration permit—enter the area to carry out low impact environmental monitoring; and

Examples—

the monitoring of air, ecology, fauna, hydrology, soil or water

(c) enter the area to do all or any of the following—

(i) move, remove or maintain equipment, machinery or plant;

(ii) carry out improvement restoration for the mining tenement;

(iii) carry out care and maintenance of disturbed areas;

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(iv) carry out low impact track construction or maintenance;

(v) put in place or maintain low impact infrastructure for a purpose mentioned in subparagraphs (i) to (iv).

(2) However, if the mining tenement is a prospecting permit or exploration permit, an activity mentioned in subsection (1)(c)(iv) or (v) may be carried out only if it is reasonably necessary because of rehabilitation or environmental management carried out under subsection (1)(a).

(3) The holder's rights and obligations under the rest of this Act continue to apply for an entry and the carrying out of an activity authorised under subsection (1).

(4) Without limiting subsection (3), a requirement under the rest of this Act that, other than for this part, would apply for an entry of a type authorised under subsection (1) applies for an entry authorised under subsection (1).

(5) In this section—

low impact means of low impact on the environment and of low impact for land disturbance.

rest of this Act means the provisions of this Act, other than this part, and the Common Provisions Act.

334K Ministerial power to suspend rental obligation

(1) This section applies if the Minister is satisfied that, because of section 334I, the holder of an oil shale mining tenement for the land is not able to, or will not be able to, carry out any authorised activity for the mining tenement.

(2) The Minister may decide to suspend the holder's rental obligation for all or any part of the current term of the mining tenement.

(3) However, the suspension can not take effect before 1 January 2009.

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(4) During the suspension the holder's rental obligation does not apply.

(5) In this section—

holder's rental obligation means the holder's obligation under this Act or a condition of the mining tenement to pay rent for the mining tenement.

334L Suspension or waiver of reporting obligations

(1) During the moratorium period a reporting obligation of the holder of an oil shale mining tenement for the land is suspended to the extent it relates to oil shale activities.

(2) Subsection (3) applies if the Minister is satisfied authorised activities have not been, or will not be, carried out for the mining tenement during all or any part of the current term of the mining tenement.

(3) The Minister may, by written notice to the holder, waive the reporting obligation of the holder for all or any part of the current term of the mining tenement.

(4) In this section—

reporting obligation means an obligation under this Act or a condition of the mining tenement to submit reports to the Minister about authorised activities for the mining tenement.

334M Suspension or waiver of performance requirements

(1) During the moratorium period a performance requirement of the holder of an oil shale mining tenement for the land is suspended to the extent it relates to oil shale activities.

(2) The Minister may, by written notice to the holder, waive or reduce a performance requirement of the holder during all or any part of the current term of the mining tenement to take account of the effect of section 334I.

(3) In this section—

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performance requirement means a requirement under this Act or a condition of a mining tenement about performance.

334N Transfers

(1) During the moratorium period the following may be transferred only if the conditions mentioned in subsection (2) have been complied with—

(a) an oil shale mining tenement for the land;

(b) an interest in an oil shale mining tenement for the land;

(c) an application for an oil shale mining tenement for the land.

(2) For subsection (1), the conditions are—

(a) the Minister has given written consent to the transfer; and

(b) the transfer is made in the approved form and lodged with the chief executive; and

(c) the lodgement is accompanied by the fee prescribed under a regulation.

(3) The Minister may, if asked in writing by the holder of, or the applicant for, the mining tenement and the proposed transferee, give written consent to the transfer.

(4) However, if there is an approved form for the making of the request, the request may be made only if it is in that form.

334O Renewals

(1) This section applies if, during the moratorium period, an oil shale mining tenement for the land reaches its expiry day.

(2) The mining tenement is taken to have been renewed.

(3) The term of the renewed mining tenement starts on the day after the expiry day and has the same duration as the mining tenement's term that ended on the expiry day.

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(4) The renewed mining tenement has the same conditions that the mining tenement had immediately before the expiry day.

334P Rights and obligations under other Acts not affected

To remove any doubt, it is declared that this division does not limit or otherwise affect or suspend rights or obligations of the holder of an oil shale mining tenement under—

(a) the Environmental Protection Act; or

(b) a relevant environmental condition for the mining tenement; or

(c) the Petroleum and Gas (Production and Safety) Act, chapter 3; or

Editor's note—

Petroleum and Gas (Production and Safety) Act, chapter 3 (Provisions for coal seam gas)

(d) another Act relevant to mining tenements.

Part 2 Collingwood Park State guarantee

334Q Definitions for pt 2

In this part—

affected land means land that, on 5 November 2008, was—

(a) a part of the place given the name of Collingwood Park and entered in the Gazetteer of Place Names under the *Place Names Act 1994*; and

(b) used only for a residential, charitable or religious purpose.

Collingwood Park State guarantee or ***guarantee*** see section 334R.

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registrar means the registrar of titles under the *Land Title Act 1994*.

334R What is the *Collingwood Park State guarantee*

(1) The ***Collingwood Park State guarantee*** or ***guarantee*** is a guarantee given by the State, under this Act, for affected land—

(a) to pay for any works necessary to stabilise the affected land if subsidence damage to the land occurs; or

(b) to repair any subsidence damage to the affected land if, in the chief executive's opinion, it is cost-effective for the State to repair the damage; or

(c) to purchase the affected land at market value if—

(i) the land is affected by subsidence damage; and

(ii) in the chief executive's opinion, it is not cost-effective for the State to repair the damage.

(2) A decision about the guarantee under subsection (1) is made under this Act.

(3) In this section—

market value, of affected land, means the market value the land would have had, at the time the chief executive formed the opinion mentioned in subsection (1)(c)(ii), if the subsidence damage had not happened.

mining activity means an activity for the purpose of extracting coal by underground mining.

subsidence damage, for affected land, means damage to the affected land, or any buildings or structures on the land that were in existence at the beginning of 25 April 2008, caused by or related to subsidence resulting from mining activity.

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334S Registering guarantee in freehold land register

(1) An owner of affected land may, in writing, ask the chief executive to have a record of the guarantee for the land included on the freehold land register.

(2) If a request is made under subsection (1), the chief executive must, as soon as practicable, give the registrar written notice asking the registrar to keep a record of the guarantee for the land.

(3) On receiving the notice, the registrar must keep a record so that a search of the freehold land register will show the guarantee for the affected land.

334T Removing guarantee from registrar's records

(1) An owner of affected land may, in writing, ask the chief executive to have a record of the guarantee for the land removed from the freehold land register.

(2) If a request is made under subsection (1), the chief executive must give the registrar written notice asking the registrar to remove the record of the guarantee for the affected land from the registrar's records.

(3) As soon as practicable after receiving the notice, the registrar must remove the record of the guarantee for the affected land from the registrar's records.

(4) The guarantee for the affected land may not be removed other than under this section.

334U No fee payable

No fee is payable to the registrar for keeping or removing, under this part, a record of the guarantee for affected land.

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Part 4 Cherwell Creek provisions

334ZB Definitions for pt 4

In this part—

Cherwell Creek means Cherwell Creek Coal Pty Ltd ACN 063 763 002.

commencement day means the day this part commences.

prescribed persons means the holders of mining lease 1775 from time to time.

334ZC Renewal of EPC545

(1) This section applies to exploration permit for coal 545.

(2) The permit is renewed for a term of 2 years starting on the commencement day.

(3) However, the renewed permit applies only to the following land—

- Clermont Block 1777, sub-block w
- Clermont Block 1777, sub-block x, but excluding land subject to MDLA 364 or ML 1775
- Clermont Block 1849, sub-blocks b, g, m and x
- Clermont Block 1849, sub-blocks c, h and n, but excluding land subject to MDLA 364 or ML 1775
- Clermont Block 1849, sub-block s, but excluding land subject to MDLA 364
- Clermont Block 1849, sub-blocks u and z, but excluding land subject to MDLA 366 or ML 1775
- Clermont Block 1849, sub-block y, but excluding land subject to MDLA 366
- Clermont Block 1921, sub-blocks d and e, but excluding land subject to MDLA 366
- Clermont Block 1921, sub-block k

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- Clermont Block 1922, sub-blocks a, g, h, o and u, but excluding land subject to MDLA 366 or ML 1775
- Clermont Block 1922, sub-blocks f, m, n, t and z, but excluding land subject to MDLA 366
- Clermont Block 1923, sub-block v, but excluding land subject to MDLA 366 or ML 1775.

(4) Subsection (2) applies despite section 147D(2).

(5) The renewed permit is subject to the following conditions—

(a) the holder must expend at least $50,000 in each year of the term of the permit on activities authorised by the permit;

(b) the holder must carry out the program of work stated in the application for renewal of the permit dated 28 May 2007;

(c) the holder must comply with the document titled 'Schedule of General Exclusions and Conditions, version 13 (February 2003)' mentioned in the renewal of the permit granted on 26 August 2003;

(d) the conditions applying under section 141.

(6) The renewal has effect as if it were granted by the Minister under this Act.

(7) The land mentioned in subsection (3) as being excluded from the sub-blocks mentioned in the subsection is excluded land for section 176A.

(8) However, to remove any doubt, it is declared that section 176A applies subject to sections 334ZE and 334ZF.

(9) Except as otherwise stated, this section does not limit the application of other provisions of this Act to the renewed permit including, for example, provisions about cancelling an exploration permit or reducing its area.

(10) In this section—

MDLA 364 means application for mineral development licence 364.

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MDLA 366 means application for mineral development licence 366.

ML 1775 means mining lease 1775.

334ZD Rejection of particular applications for mining tenements

(1) This section applies to each application for a mining tenement that—

(a) was made by Cherwell Creek; and

(b) relates to all or any of the prescribed land under section 334ZE or 334ZF; and

(c) was current immediately before the commencement day.

(2) The application is rejected.

334ZE Persons who may apply for, or be granted, a mining tenement for land in the area of MDLA364

(1) For the prescribed period—

(a) a mining lease in respect of all or any of the prescribed land can only be applied for by, or granted to, the prescribed persons; and

(b) no other mining tenement in respect of all or any of the prescribed land can be applied for by, or granted to, anyone.

(2) Subsection (1)(a) applies despite section 232.

(3) For subsection (1), the prescribed period is the period of 2 years starting on the commencement day or, if an extension is granted under subsection (4), the extended period.

(4) Before the prescribed period ends, the Minister may grant an extension of the period if the prescribed persons wish to make an application mentioned in subsection (1)(a) and the Minister is satisfied that, in all the circumstances, there are good reasons why the application has not been made by that time.

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(5) As soon as practicable after granting an extension under subsection (4), the Minister must publish a gazette notice stating the extended period.

(6) The prescribed persons are eligible persons for section 233.

(7) In this section—

prescribed land means the land in Clermont Block 1849, sub-block t and the land that, as at the beginning of 14 April 2008, was the subject of application for mineral development licence 364 made by Cherwell Creek.

334ZF Persons who may apply for, or be granted, a mining tenement for particular land in the area of SL12/42239

(1) For the prescribed period—

(a) a mining lease in respect of all or any of the prescribed land can only be applied for by, or granted to, the prescribed persons; and

(b) no other mining tenement in respect of all or any of the prescribed land can be applied for by, or granted to, anyone.

(2) Subsection (1)(a) applies despite section 232.

(3) For subsection (1), the prescribed period is the period of 1 year starting on the commencement day or, if an extension is granted under subsection (4), the extended period.

(4) Before the prescribed period ends, the Minister may grant an extension of the period if the prescribed persons wish to make an application mentioned in subsection (1)(a) and the Minister is satisfied that, in all the circumstances, there are good reasons why the application has not been made by that time.

(5) As soon as practicable after granting an extension under subsection (4), the Minister must publish a gazette notice stating the extended period.

(6) The prescribed persons are eligible persons for section 233.

(7) In this section—

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prescribed land means land that, as at the beginning of 14 April 2008—

(a) was in the area of special lease 12/42239 (title reference 17560077); and

(b) was—

(i) the subject of exploration permit for coal 545; or

(ii) neither in the area of a mining tenement nor the subject of a current application for a mining tenement.

334ZG No consent required for application for mining tenement for particular land

(1) This section applies to an application for a mining lease by the prescribed persons in respect of all or any prescribed land under section 334ZE or 334ZF, if the land is in the area of an existing authority within the meaning of section 248(1).

(2) Despite section 248(2), the written consent to the application of the holder of the existing authority need not be obtained by the prescribed persons.

(3) Also, section 248(4) does not apply to the application.

(4) To remove any doubt, it is declared that this section applies to the application whether it was made before or after the commencement of this section.

334ZH Deciding application to add excluded land to EPC 545

(1) This section applies to an application under section 176A to add excluded land to exploration permit for coal 545 (the ***excluded land application***) whether the application was made before or after the commencement of this section.

(2) If—

(a) the excluded land application involves prescribed land under section 334ZE or 334ZF; and

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(b) the prescribed persons have, under section 334ZE or 334ZF, applied for a mining lease in respect of the prescribed land;

the Minister need not decide the excluded land application, to the extent it relates to the prescribed land, until after the day each application for a mining lease in respect of the prescribed land has been finally decided.

(3) For this Act, if the Minister defers deciding a part of the excluded land application under subsection (2), the application is taken not to have been finally decided by the Minister until the day the Minister decides that part.

(4) In this section—

excluded land means—

(a) excluded land as defined under section 176A(5); or

(b) land that, under section 334ZC(7), is excluded land for section 176A.

334ZI No compensation payable by the State

(1) No compensation is payable by the State to Cherwell Creek or any other person for or in connection with the enactment or operation of this part or anything done to carry out or give effect to this part.

(2) Without limiting subsection (1), the State is not liable to Cherwell Creek or any other person for any claim arising out of or in any way connected to the rejection of applications under section 334ZD.

(3) This section applies despite any other Act or law.

(4) In this part—

State includes any person acting, or purportedly acting, for or on behalf of the State at any time.

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334ZJ Compensation payment by prescribed persons

(1) Cherwell Creek may apply to the Land Court for an order for the payment of compensation for the loss of its opportunity, because of the enactment of this part, to commercialise the MDLA364 coal resource.

(2) An application may only be made within 3 months after the commencement day.

(3) The prescribed persons are parties to the proceeding on the application.

(4) On an application under this section, the Land Court must—

(a) decide whether any compensation should be payable; and

(b) if it decides compensation should be payable—

(i) decide the amount of compensation; and

(ii) make an order for payment of the amount by the prescribed persons to Cherwell Creek.

(5) In making a decision under subsection (4), the Land Court must have regard to the likelihood that, had this part not been enacted, Cherwell Creek, alone or in conjunction with another person, would have been able to commercialise the MDLA364 coal resource, having regard to the following matters—

(a) the likely extent and quality of the MDLA364 coal resource;

(b) the likely mineability of the MDLA364 coal resource;

(c) the likely market for any coal mined from the MDLA364 coal resource;

(d) the likely life of a mine for the MDLA364 coal resource;

(e) the likely coal revenue generated from the MDLA364 coal resource;

(f) the likely coal revenue generation costs;

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(g) the likelihood of a mining lease, appropriate for Cherwell Creek to commercialise the MDLA364 coal resource, being granted under this Act;

Note—

See sections 269(4) and 271 for matters that the Land Court and Minister take into account in dealing with an application for the grant of a mining lease.

(h) any other relevant matter.

(6) Cherwell Creek may appeal to the Land Appeal Court against a decision of the Land Court under this section only on the ground of error of law.

(7) Subsection (6) applies despite the *Land Court Act 2000*, section 64.

(8) In this section—

coal revenue generation costs means the costs of generating revenue from the MDLA364 coal resource, including the costs of, or relating to, the following—

(a) the proving up of the MDLA364 coal resource;

(b) mine planning and environmental planning;

(c) development and construction of a coal mine and associated infrastructure;

(d) compliance with this Act, the *Environmental Protection Act 1994* and the *Coal Mining Safety and Health Act 1999*;

(e) extraction of coal;

(f) preparation of coal;

(g) transportation, including access to railways, ports or other relevant infrastructure;

(h) employed or contracted labour;

(i) equipment;

(j) marketing;

(k) financing;

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(l) rent and royalties payable to the State.

MDLA364 coal resource means the coal resource in the land that, as at the beginning of 14 April 2008, was the subject of application for mineral development licence 364.

prescribed persons means the persons who are the holders of mining lease 1775 on the commencement day.

Part 4A Moratorium relating to mineral (f)

Division 1 Preliminary

334ZJA Purpose of part

This part provides for matters relating to a moratorium for mineral (f).

334ZJB Relationship with other provisions

(1) This part applies despite any other provision of this Act or a mineral (f) development licence.

(2) This part does not suspend, limit or otherwise affect rights or obligations of the holder of a mineral (f) development licence under—

(a) a relevant environmental condition for the licence; or

(b) the Environmental Protection Act; or

(c) the Petroleum and Gas (Production and Safety) Act, chapter 3; or

(d) another Act relating to mining tenements.

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334ZJC Inconsistency with other provisions

If a provision of this part is inconsistent with another provision of this Act, the provision of this part applies instead of the other provision to the extent of the inconsistency.

Division 2 Activities for mineral (f)

334ZJD Prohibitions relating to mineral (f)

(1) A person may not apply for—

(a) the renewal of a mineral (f) development licence under section 197; or

(b) approval to add mineral (f) to a mineral development licence under section 208; or

(c) a mining lease for mineral (f) under section 232; or

(d) approval to mine mineral (f) under section 298.

(2) The Minister must not—

(a) renew a mineral (f) development licence under section 197A; or

(b) approve an application to add mineral (f) to a mineral development licence under section 208; or

(c) grant a mining lease for mineral (f) under section 234; or

(d) approve an application to mine mineral (f) under section 298.

(3) This section does not apply to the renewal of a mineral (f) development licence under section 334ZJG.

334ZJE Activities under mineral (f) development licence

(1) Any activity relating to mineral (f) under a mineral (f) development licence, other than rehabilitation activities, is not

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authorised to be carried out under this Act or any other Act relating to mining.

(2) ***Rehabilitation activities*** are—

(a) carrying out—

(i) rehabilitation or environmental management required under any relevant environmental requirement under the Environmental Protection Act; or

(ii) environmental monitoring; or

Example—

monitoring air, ecology, fauna, hydrology, soil or water

(iii) decommissioning activities that demonstrate the gas production process within a coal seam has stopped; or

(iv) improvement restoration for the mineral (f) development licence; or

(v) care and maintenance of disturbed areas; or

(b) maintaining, moving or removing equipment, machinery or plant; or

(c) any other activity that is reasonably necessary for, or incidental to, carrying out an activity mentioned in paragraph (a) or (b).

334ZJF Obligations under mineral (f) development licence

(1) This section applies if the Minister is satisfied a mineral (f) development licence authorises only rehabilitation activities.

(2) The Minister may, by written notice given to the holder of the licence—

(a) waive the holder's rent obligation for all or part of the term of the licence; or

(b) waive or reduce another obligation of the holder in relation to mineral (f) for all or part of the term of the licence.

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(3) In this section—

obligation means an obligation under—

(a) this Act; or

(b) a condition of the licence.

rent obligation means the obligation to pay rental on the licence.

334ZJG Automatic renewal of mineral (f) development licence

(1) This section applies to a mineral (f) development licence to the extent the licence relates to rehabilitation activities.

(2) The licence is taken to be renewed in relation to the rehabilitation activities, for the same term and on the same conditions, from the day after the licence's expiry day.

Part 4B Grant of mining lease application 70460

334ZJH Definitions for part

In this part—

ML 70434 entity means the entity that is the applicant for mining lease application 70434.

ML 70460 entity means the entity that is the applicant for mining lease application 70460.

334ZJI Grant of mining lease application 70460

(1) This section applies to mining lease application 70460 for a mining lease for transportation through land under section 316.

(2) On the commencement, the mining lease applied for is, by operation of this section, granted to the ML 70460 entity.

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(3) The mining lease granted under subsection (2)—

(a) expires on 31 December 2032; and

(b) can not be renewed.

(4) This Act, other than sections 286 to 287, applies in relation to the mining lease as if it had been granted by the Minister under section 271A on the day of the commencement.

334ZJJ Effect of grant on other applications

(1) The ML 70434 entity need not comply with section 248 for the following applications, to the extent the applications relate to land within the area of the mining lease granted under section 334ZJI(2)—

(a) mining lease application 70434;

(b) another application for a mining lease;

(c) an application under section 275 for surface area to be included in a mining lease.

(2) Subsection (1) applies only while the mining lease granted under section 334ZJI(2) is in force.

334ZJK No compensation payable by State, ML 70434 entity or ML 70460 entity

(1) No compensation is payable by the State, the ML 70434 entity or the ML 70460 entity to any person for or in connection with the enactment or operation of this part, or anything done to give effect to this part, other than as required under sections 279 and 280.

(2) This section applies despite any other Act or law.

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Part 5 Other provisions

334ZK Validation of granting of mining lease 1978

(1) This section applies to mining lease 1978.

(2) The mining lease is taken to be, and always to have been, validly granted under section 234.

(3) The area of the mining lease is taken to exclude, and always to have excluded, the parts of Crinum Creek, within the boundaries of the mining lease, as shown on RP805034 and RP615398.

(4) The surface area comprised in the mining lease is taken to include, and always to have included, the surface area of the land (other than the land described as lot 6 on RP806552) that, under subsection (3), is comprised in the mining lease.

(5) To remove any doubt, it is declared that nothing in this section affects an agreement, or determination by the tribunal, made under this Act before the commencement of this section about compensation payable by the holder of the mining lease for the surface area of any land being included in the mining lease.

334ZL Validation of inclusion of additional surface area No. 2 in mining lease 4761

(1) This section applies to mining lease 4761.

(2) The application made under section 275 to include additional surface area No. 2 in the mining lease is taken to have been validly granted on 29 March 2007.

(3) Additional surface area No. 2 is taken to have been included in the mining lease on 29 March 2007.

(4) To remove any doubt, it is declared that nothing in this section affects an agreement, or determination by the tribunal, made under this Act before the commencement of this section about compensation payable by the holder of the mining lease for

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additional surface area No. 2 being included in the mining lease.

(5) To remove any doubt, it is declared that this section does not limit or otherwise affect the operation of section 416 in relation to the application or the mining lease.

(6) In this section—

additional surface area No. 2 means the area identified as surface area 3 in mine plan 37891 recorded under this Act in the register.

334ZM Provisions about compensation for owners of lots 65 and 66 on RP909055

(1) This section applies to—

(a) lot 65 on RP909055 (***lot 65***), part of the surface area of which, under section 334ZK, is taken to be, and always to have been, included in mining lease 1978; and

(b) lot 66 on RP909055 (***lot 66***) part of which is comprised in mining lease 1978.

(2) The holder of the mining lease must pay compensation to the owner of lot 65.

(3) The compensation amount and the terms on which it is payable must be—

(a) the subject of an agreement between the holder and the owner; or

(b) decided by the Land Court under section 281 as if it were compensation referred to in section 279.

(4) This Act applies as if the agreement mentioned in subsection (3)(a) were an agreement mentioned in section 279(1)(a).

Note—

See, for example, sections 279(3) and 281.

(5) No compensation is payable by the holder of the mining lease to the owner of lot 66.

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(6) Subsection (5) applies despite section 416 and the *Property Law Act 1974*.

334ZN Cancellation of Shelburne Bay mining leases

(1) On and from the commencement of this section—

(a) the relevant mining leases are cancelled; and

(b) without limiting paragraph (a), and despite any entitlement there may otherwise be under this Act for the renewal of the relevant mining leases—

(i) any application made before the commencement for the renewal of the leases must not be further dealt with under this Act; and

(ii) the Minister must not grant a renewal of the leases.

(2) No compensation is payable to any person because of the operation of subsection (1).

(3) Subsection (2) applies despite any other provision of this Act and despite any other Act or law.

(4) In subsection (1)—

relevant mining leases means mining leases 5940 and 5941 over land situated in the Mareeba mining district.

334ZO Particular mineral development licences and mining leases

(1) A mineral development licence or a mining lease granted before the commencement of this section wholly or partly in respect of relevant land for an exploration permit is taken to have been validly granted.

(2) An application for a mineral development licence or a mining lease to the extent the application is in respect of relevant land for an exploration permit is taken to have been validly made if the application—

(a) was lodged before the commencement of this section; and

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(b) would have complied with the Act in all respects if the relevant land had not been excluded from the exploration permit.

(3) In this section—

relevant land, for an exploration permit, means land that was excluded under a condition of the permit to the effect that land subject to native title is excluded from the permit.

Chapter 12A Provisions about water for mineral development licences and mining leases

Part 1 Water rights for mineral development licences and mining leases

334ZP Entitlement to use underground water

(1) The holder of a mineral development licence or mining lease may take or interfere with underground water in the area of the licence or lease if the taking or interference happens during the course of, or results from, the carrying out of an authorised activity for the licence or lease.

Examples—

1 mine dewatering of underground water to the extent necessary to achieve safe operating conditions in the mine

2 taking underground water as a result of evaporation from an open mine pit

(2) The rights of the holder of the mineral development licence or mining lease under subsection (1)—

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(a) are the holder's ***underground water rights*** for the licence or lease; and

(b) are subject to the holder complying with the holder's underground water obligations.

(3) Underground water taken or interfered with under subsection (1) is ***associated water***.

(4) The holder of the mineral development licence or mining lease may use associated water for any purpose and within or outside the area of the licence or lease.

(5) The holder of the mineral development licence or mining lease must, in accordance with any requirements prescribed by regulation—

(a) measure the volume of associated water taken by the holder or, if the taking is the result of evaporation, estimate the volume of water taken; and

(b) report the volume or estimated volume of associated water taken by the holder to the chief executive.

Maximum penalty—500 penalty units.

(6) The holder of the mineral development licence or mining lease must advise the chief executive of the department in which chapter 3 of the Water Act is administered of the exercise of the holder's underground water rights immediately after the holder starts exercising the rights.

Maximum penalty—500 penalty units.

(7) However, if the mineral development licence or mining lease is in force at the commencement of this section, the holder of the licence or lease does not commit an offence against subsection (6) if the holder notifies the chief executive of the exercise of the holder's underground water rights within 3 months after the commencement.

(8) Subsection (9) applies if, after the commencement of this section, the holder of a mineral development licence or mining lease exercises an entitlement under a water licence or water permit under the Water Act to take or interfere with water.

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(9) To remove any doubt, it is declared that the exercise of the entitlement by the holder of the mineral development licence or mining lease during the course of, or resulting from, the carrying out of an authorised activity for the licence or lease is also an exercise of the holder's underground water rights under this section and is subject to compliance with the holder's underground water obligations.

334ZQ Water monitoring activities

(1) The holder of the mineral development licence or mining lease may carry out any of the following activities in the area of the licence or lease to comply with its underground water obligations for the licence or lease—

(a) gathering information about, or undertaking an assessment of, a water bore;

(b) monitoring effects of the exercise of the holder's underground water rights for the licence or lease;

(c) constructing or plugging and abandoning a water monitoring bore;

(d) gathering information for preparing an underground water impact report or final report under the Water Act, chapter 3;

(e) carrying out any other activity necessary to comply with the holder's underground water obligations.

(2) If the holder of the mineral development licence or mining lease is also the holder of an exploration permit, the holder may carry out any of the activities mentioned in subsection (1) in the area of the exploration permit to comply with its underground water obligations for the licence or lease.

(3) The constructing or plugging and abandoning of a water monitoring bore must be carried out by an individual licensed under the Water Act, chapter 8, part 2B to carry out the activity.

Maximum penalty—500 penalty units.

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(4) An activity mentioned in subsection (1) is a ***water monitoring activity***.

334ZR Authorisation for Water Act

Taking, interfering with, or using underground water under section 334ZP is authorised for the Water Act.

Note—

See the Water Act, section 808.

334ZS Water Act not otherwise affected

(1) To remove any doubt, it is declared that a holder of a mineral development licence or mining lease can not take, interfere with, or use water unless the taking, interference or use is authorised under this part or the Water Act.

(2) In this section—

water see the Water Act, schedule 4.

Note—

See the Water Act, chapter 2, part 3 and section 808.

Part 2 Water monitoring authorities

Division 1 Obtaining water monitoring authority

334ZT Who may apply for water monitoring authority

(1) The holder of a mineral development licence or mining lease may apply for a water monitoring authority for stated land outside the area of the licence or lease to allow the holder to comply with the holder's underground water obligations for the licence or lease.

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(2) Without limiting subsection (1), the application may be made or granted—

(a) over land in the area of another mining tenement; and

(b) for 1 or more mineral development licences or mining leases held by the same applicant.

334ZU Requirements for making application

The application must be—

(a) in the approved form; and

(b) accompanied by the fee prescribed by regulation.

334ZV Deciding application for water monitoring authority

(1) The Minister may grant or refuse to grant the water monitoring authority.

(2) However, the water monitoring authority must not be granted unless an environmental authority for the water monitoring authority has been issued.

Note—

If the application relates to acquired land, see also section 10AAC.

(3) The Minister may, before deciding the application, seek advice about the application from the chief executive of the department in which the Water Act is administered.

(4) A water monitoring authority must state its area and each mineral development licence or mining lease to which it relates.

(5) A water monitoring authority may also state—

(a) conditions or other provisions of the authority, other than conditions or provisions that are—

(i) inconsistent with division 2 or section 334ZZF or 334ZZG or any other mandatory condition for water monitoring authorities; or

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Note—

The *Mineral and Energy Resources (Common Provisions) Act 2014*, chapter 3 also imposes mandatory conditions on water monitoring authorities.

(ii) inconsistent with a condition of any mineral development licence or mining lease to which the authority relates; or

(iii) the same as, or substantially the same as, or inconsistent with any relevant environmental condition for a water monitoring activity for the authority; and

(b) the day it takes effect.

(6) However, the provisions of a water monitoring authority may exclude or restrict the carrying out of water monitoring activities, if the exclusion or restriction does not prevent the holder of the mineral development licence or mining lease to which it relates from complying with the holder's underground water obligations.

(7) The Minister may, as a condition of deciding to grant the water monitoring authority, require the applicant to do all or any of the following within a stated reasonable period—

(a) pay the annual rent for the first year of the authority;

(b) give security for the authority.

(8) If the applicant does not comply with the requirement, the application may be refused.

Division 2 Particular activities authorised for water monitoring authorities

334ZW Operation of div 2

(1) This division provides for particular activities that are authorised for a water monitoring authority.

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Note—

The carrying out of particular activities on particular land in a water monitoring authority's area may not be authorised following the taking of the land under a resumption law. See section 10AAB.

(2) The activities may be carried out despite the rights of an owner or occupier of land on which they are exercised.

(3) However, the carrying out of the activities is subject to—

(a) sections 3A, 334ZZA and 334ZZB and the *Mineral and Energy Resources (Common Provisions) Act 2014*, chapter 3; and

(b) the mandatory and other conditions of the water monitoring authority; and

(c) any exclusion or restriction provided for in the water monitoring authority on the carrying out of the activities.

334ZX Water monitoring activities

Subject to section 334ZV(6), the holder of the water monitoring authority may carry out any water monitoring activity in the area of the authority.

334ZY Limited right to take or interfere with underground water

The holder of the water monitoring authority may take or interfere with underground water only to the extent that the taking or interference is the unavoidable result of carrying out a water monitoring activity in the area of the authority.

Example—

taking or interfering with underground water during the drilling or maintenance of a water monitoring bore in the area

334ZZ Authorisation for Water Act

For the Water Act, taking or interfering with underground water under section 334ZY is taken to be authorised.

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Note—

See the Water Act, section 808.

334ZZAWater Act not otherwise affected

To remove any doubt, it is declared that the holder of a water monitoring authority can not take or interfere with water as defined under the Water Act unless the taking or interference is authorised under this division or the Water Act.

Note—

See the Water Act, chapter 2, part 3 and section 808.

334ZZBRestriction on carrying out authorised activities

In carrying out an activity authorised for the water monitoring authority under this division, the holder of the authority must not interfere with the carrying out of an authorised activity for a mining tenement or petroleum authority, or for another water monitoring authority, the area of which includes the area of the authority.

Maximum penalty—1,000 penalty units.

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 412B, to have also committed the offence.

334ZZCNo right to mineral discovered

To remove any doubt, it is declared that the discovery of a mineral while carrying out an activity authorised for the water monitoring authority under this division does not, of itself, give the holder of the authority a right to the mineral.

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Division 3 Miscellaneous provisions

334ZZDTerm of authority

(1) Subject to the prescribed provisions, a water monitoring authority continues in force until there is no longer any mineral development licence or mining lease to which the authority relates in force.

(2) In this section—

prescribed provisions means—

(a) for a mineral development licence—section 209; or

(b) for a mining lease—section 308.

334ZZEProvision for who is the holder of a water monitoring authority

(1) If there is only 1 mineral development licence or mining lease to which a water monitoring authority relates, the holder of the authority is taken to be the person who, from time to time, holds the licence or lease to which the authority relates.

(2) Subsections (3) and (4) apply if there is more than 1 mineral development licence or mining lease to which a water monitoring authority relates.

(3) If, as a result of dealing with the mineral development licences or mining leases, all of the licences or leases are transferred to the same person, the transferee is taken to be the holder of the water monitoring authority.

(4) If, as a result of dealing with the mineral development licences or mining leases, 1 or more but not all of the licences or leases are transferred to the same person, the person from whom the licences or leases were transferred continues to be the holder of the water monitoring authority.

(5) A water monitoring authority, or an interest in a water monitoring authority, can not be transferred except by operation of law under this section.

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334ZZFAdditional condition of relevant mineral development licence or mining lease

If a condition is imposed on a water monitoring authority (the ***authority condition***), it is a condition of each mineral development licence or mining lease to which the authority relates that the holder of the licence or lease must comply with the authority condition.

334ZZGAnnual rent

(1) A water monitoring authority holder must pay the State the annual rent, as prescribed by regulation.

(2) The annual rent must be paid in the way, and on or before the day, prescribed by regulation.

334ZZHPower to use security

(1) This section applies if the Minister is satisfied that—

(a) a condition of a water monitoring authority or any provision of this Act relating to the water monitoring authority has not been complied with; or

(b) damage has been caused by the holder of a water monitoring authority or a person acting under the authority of the holder.

(2) The Minister may require the holder to take all action necessary to rectify the noncompliance or damage.

(3) If the holder does not rectify the noncompliance or damage, the Minister may use the security deposited for the water monitoring authority to rectify the noncompliance or damage.

(4) In this section—

damage means actual damage caused to pre-existing improvements on the area of the water monitoring authority.

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334ZZI Amending water monitoring authority by application

(1) The holder of a water monitoring authority may apply to the Minister to amend it—

(a) to increase or decrease its area; or

(b) to add or remove, or to reflect an amendment of, a mineral development licence or mining lease that relates to the authority.

(2) The holder of a water monitoring authority can not apply to amend the authority in any other way.

(3) The application must be—

(a) in the approved form; and

(b) accompanied by the fee prescribed by regulation.

(4) The Minister may grant or refuse to grant the amendment.

(5) However, the Minister may, before deciding the application, seek advice about the application from the chief executive of the department in which the Water Act is administered.

(6) The amendment may be granted (a ***conditional grant***) subject to the applicant's written agreement to the Minister amending the water monitoring authority in a stated way that the Minister considers appropriate.

(7) On refusal of the amendment or the making of a decision to make a conditional grant, the chief executive must give the applicant an information notice about the decision to refuse or to make the conditional grant.

(8) In this section—

information notice means a notice stating—

(a) the reasons for the decision; and

(b) that the applicant may appeal against the decision; and

(c) how to appeal.

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Part 3 Ownership of particular works

334ZZJ Ownership of works constructed in connection with water monitoring bore

(1) This section applies if the holder of a mineral development licence or mining lease constructs a water monitoring bore on land in the area of a prescribed holding to comply with the holder's underground water obligations for a mineral development licence or mining lease.

(2) While the water monitoring bore remains on the land and the mineral development licence or mining lease remains in force, works constructed in connection with the water monitoring bore remain the property of the person who owned them immediately before they were constructed on the land.

(3) Subsection (2) applies despite—

(a) the works having become part of the land; or

(b) the sale or other disposal of the land.

(4) However, subsection (2) does not apply if the water monitoring bore is transferred under part 4.

(5) The works can not be—

(a) levied or seized in execution; or

(b) sold in exercise of a power of sale or otherwise disposed of by a process under a law of a State taken against the holder or the owner of the land.

(6) This section applies despite—

(a) an Act or law of the State; or

(b) a contract, covenant or claim of right under a law of the State.

(7) In this section—

prescribed holding means a mineral development licence, mining lease, exploration permit or water monitoring authority.

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334ZZKInterfering with water monitoring bore

(1) A person must not interfere with a water monitoring bore unless the person is the owner of the bore or the owner of the bore consents.

Maximum penalty—1,000 penalty units.

(2) In this section—

owner, of a water monitoring bore, means the person who, under section 334ZZJ, owns the works constructed in connection with the bore.

Part 4 Water monitoring bores

Division 1 Transfer of water monitoring bores

334ZZL Operation of division

(1) This division permits, in particular circumstances, the transfer of the following in relation to a water monitoring bore—

(a) the control of, and responsibility for, the bore;

(b) the ownership of any works constructed in connection with the bore.

Note—

For the ownership of works mentioned in paragraph (b) generally, see section 334ZZJ.

(2) In this division, a ***transfer*** of a water monitoring bore is a reference to a transfer in relation to the bore mentioned in subsection (1).

334ZZM Transfer permitted only under division

A purported transfer of a water monitoring bore is of no effect unless—

(a) the transfer is permitted under this division; and

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(b) the requirements for making the transfer have been complied with.

334ZZN Effect of transfer

(1) If a water monitoring bore is transferred, any obligation the transferor had under this Act or another law in relation to the bore ends.

(2) However, if the transferor is someone other than the State, subsection (1) does not apply in relation to the Environmental Protection Act.

Note—

For transfers by the State, see section 334ZZU.

334ZZO Transfer of water monitoring bore to landowner

(1) An owner of a water monitoring bore may transfer the bore to a landowner if—

(a) a notice in the approved form is given to the chief executive; and

(b) the transfer fee prescribed by regulation is paid.

Note—

See also the *Water Act 2000*, section 808.

(2) The approved form must require—

(a) a statement by the owner that, if the bore was constructed under section 334ZQ(1)(c), section 334ZQ(3) has been complied with for the bore; and

(b) the signed consent of the landowner to the transfer.

(3) In this section—

landowner means the owner of the land on which the water monitoring bore is located.

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334ZZP Transfer of water monitoring bore to the State

(1) An owner of a water monitoring bore may transfer the bore to the State if—

(a) the owner gives the chief executive a notice, in the approved form, offering to transfer the bore to the State; and

(b) the chief executive receives the notice no later than 60 business days before the owner must, as required under section 334ZZS, decommission the bore; and

(c) the chief executive, within 20 business days after receiving the notice, gives the owner notice that the State consents to the transfer.

(2) The approved form must require a statement by the owner that, if the bore was constructed under section 334ZQ(1)(c), section 334ZQ(3) has been complied with for the bore.

(3) If the chief executive gives the owner a notice under subsection (1)(c), the notice must state the day the transfer takes effect.

(4) If the chief executive does not give the owner a notice under subsection (1)(c), the owner must, as required under section 334ZZS, decommission the bore.

334ZZQ Transfer of water monitoring bore to holder of mineral development licence, mining lease or water monitoring authority

(1) An owner of a water monitoring bore may transfer the bore to a holder of a mineral development licence, mining lease or water monitoring authority if—

(a) the bore is in the area of the licence, lease or authority; and

(b) the owner gives the chief executive a notice in the approved form about the transfer; and

(c) the transfer fee prescribed by regulation is paid.

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(2) The approved form must require a statement by the owner that, if the bore was constructed under section 334ZQ(1)(c), section 334ZQ(3) has been complied with for the bore.

334ZZR Notice of transfer to Water Act regulator

(1) If a transfer is made under section 334ZZO or 334ZZQ, the chief executive must give the Water Act regulator notice of the transfer.

(2) A failure to comply with subsection (1) does not invalidate or otherwise affect the transfer.

(3) In this section—

Water Act regulator means the chief executive of the department in which the Water Act is administered.

Division 2 Decommissioning of water monitoring bores

334ZZS Obligation to decommission

(1) This section applies to a person (the ***owner***) who holds a mineral development licence, mining lease or water monitoring authority under which a water monitoring bore was constructed, unless the water monitoring bore has, under division 1, been transferred.

(2) The owner must decommission the bore from use under this Act before—

(a) the mineral development licence, mining lease or water monitoring authority ends; or

(b) the land on which the bore is located is no longer in the area of the licence, lease or authority.

Maximum penalty—500 penalty units.

(3) For subsection (1), the bore is decommissioned from use under this Act only if—

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(a) it has been plugged and abandoned in the way prescribed by regulation; and

(b) the decommissioning complies with the Water Act, sections 816 and 817; and

(c) the owner gives the chief executive a notice, in the approved form, of the decommissioning of the bore.

(4) Subsection (3)(b) applies only to the extent it is not inconsistent with subsection (3)(a).

334ZZT Right of entry to facilitate decommissioning

(1) This section applies if—

(a) an owner of a water monitoring bore has not decommissioned the bore as required under section 334ZZS; and

(b) the mineral development licence, mining lease or water monitoring authority under which the bore was constructed has ended or the land on which the bore is located is no longer in the area of the licence, lease or authority.

(2) The owner may enter the following land to carry out the decommissioning—

(a) land (the ***primary land***) on which the decommissioning must be, or was required to be, carried out;

(b) any other land (the ***access land***) it is reasonably necessary to cross for access to the primary land.

(3) The Common Provisions Act, chapter 3, parts 2, 3 and 6 and part 7, divisions 1, 2 and 5 (other than subdivision 3) applies to the owner in the following way—

(a) if the mineral development licence or water monitoring authority under which the bore was constructed has ended, as if—

(i) it were still in force; and

(ii) the owner is its holder;

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(b) if the mining lease under which the bore was constructed has ended, as if—

(i) it were still in force; and

(ii) the owner is its holder; and

(iii) the Common Provisions Act, sections 37, 56(2) and 80 did not exclude the application of chapter 2, parts 2, 3 and 7 to a mining lease;

(c) as if the primary land and access land are in the area of the mineral development licence, mining lease or water monitoring authority under which the bore was constructed;

(d) as if the decommissioning is an authorised activity for the mineral development licence, mining lease or water monitoring authority under which the bore was constructed.

334ZZU Responsibility for bore after decommissioning

(1) This section applies if an owner of a water monitoring bore has, under section 334ZZS, decommissioned the bore.

(2) Despite the decommissioning, the owner continues to be responsible under this Act for the bore until the earlier of the following times (the ***relevant time***)—

(a) the end of the mineral development licence, mining lease or water monitoring authority under which the bore was constructed;

(b) when the land on which the bore is located is no longer in the area of the mineral development licence, mining lease or water monitoring authority under which the bore was constructed.

(3) At the relevant time the bore is taken to have been transferred to the State.

(4) Subsection (3) applies despite—

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(a) the bore being on or part of land owned by someone else; or

(b) the sale or other disposal of the land.

(5) After the relevant time, the State may transfer the bore.

(6) However—

(a) the transfer from the State can only be to—

(i) the owner of the land on which the bore is located; or

(ii) a holder of a mineral development licence, mining lease or water monitoring authority, the area of which includes that land; and

(b) the transfer from the State and the use of the bore by the transferee is subject to this Act and any other relevant Act or law.

Chapter 13 Administration and judicial functions

Part 1 Directions to remedy contravention

335A Power to give compliance direction

(1) This section applies if an authorised officer reasonably believes a person—

(a) has contravened, or is contravening, this Act or a mandatory provision of the land access code; or

(b) is involved in an activity that is likely to result in a contravention of this Act or a mandatory provision of the land access code.

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(2) The authorised officer may give the person a written direction (a ***compliance direction***) to take steps reasonably necessary to remedy the contravention or avoid the likely contravention.

(3) The direction may also state—

(a) the steps the authorised officer reasonably believes are necessary to remedy the contravention or avoid the likely contravention; or

(b) that the person must notify the authorised officer when the person has complied with the compliance direction; or

(c) that an authorised officer proposes, at a stated time or at stated intervals, to enter premises of which the person is the owner or occupier to check compliance with the direction.

335B Requirements for giving compliance direction

(1) A compliance direction must state the following—

(a) that the authorised officer giving it believes the person given the direction—

(i) has contravened, or is contravening, this Act or a mandatory provision of the land access code; or

(ii) is involved in an activity that is likely to result in a contravention of this Act or a mandatory provision of the land access code;

(b) the provision the authorised officer believes is being, has been, or is likely to be, contravened;

(c) the reasons for the belief;

(d) that the person must take steps reasonably necessary to remedy the contravention, or avoid the likely contravention, within a stated reasonable period.

(2) The direction must include, or be accompanied by, a review and appeal notice about the decisions to give the direction and to fix the period.

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(3) The direction may be given orally if—

(a) for any reason it is not practicable to give the direction in writing; and

(b) the authorised officer giving it warns the person it is an offence not to comply with the direction.

(4) If the direction is given orally, the authorised officer must confirm the direction by also giving it in writing as soon as practicable after giving it orally.

(5) In this section—

review and appeal notice, for a decision, means a written notice stating the following—

(a) the rights of internal review and appeal under the applied provisions under section 335D;

(b) the period in which any internal review must be started;

(c) how rights are to be exercised;

(d) that a stay of a decision the subject of an appeal under the applied provisions may be applied for.

335C Failure to comply with compliance direction

(1) A person to whom a compliance direction has been given must comply with the direction unless the person has a reasonable excuse.

Maximum penalty—500 penalty units.

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 412B, to have also committed the offence.

(2) If the direction states steps the person may take to remedy the contravention, or avoid the likely contravention, the subject of the direction, the person is taken to have complied with the direction if all the steps have been taken.

(3) Subsection (2) does not prevent the person from complying with the direction in another way.

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335D Right of internal review and appeal against compliance direction

(1) This section applies if a person is given a compliance direction.

(2) The Petroleum and Gas (Production and Safety) Act, chapter 12, other than section 817(2), (the ***applied provisions***) applies, with necessary changes, as if—

(a) the decision were mentioned in schedule 1, table 1 of that Act; and

(b) a reference in that chapter to an information notice were a reference to a review and appeal notice under section 335B.

(3) An internal review application under the applied provisions may be made only to—

(a) if the compliance direction was given by an authorised officer—the chief executive; or

(b) if the compliance direction was given by the chief executive—the Minister.

335E Other authorised officer's powers not affected

This part does not limit or otherwise affect an authorised officer's powers under another provision of this Act.

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Part 2 Conferences with eligible claimants or owners and occupiers

Division 1 Preliminary

335F Application of pt 2

(1) This part applies if an authorised officer is given a conference election notice by a mining tenement holder or an eligible claimant asking for a conference.

(2) This part also applies if—

(a) an owner or occupier of land who is concerned about any of the following gives an authorised officer notice of the concerns—

(i) that someone claiming to act under a mining tenement, or to have entered land on the tenement holder's instructions—

(A) is not authorised to be on the land; or

(B) is not complying with a provision of this Act or a condition of the mining tenement;

(ii) activities being, or proposed to be, carried out on the land apparently under a mining tenement (including when the activities are being, or are to be, carried out);

(iii) the conduct on the land of someone apparently acting under a mining tenement; or

(b) a mining tenement holder who is concerned about something relevant to the tenement involving the holder and the owner or occupier of land gives an authorised officer notice of the concerns; or

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(c) for another reason, an authorised officer considers it desirable to call a conference to discuss concerns about a mining tenement.

Division 2 Calling conference and attendance

335G Calling conference

(1) If this part applies because of the giving of a conference election notice, the authorised officer must, by notice, ask the mining tenement holder and the eligible claimant (the ***parties***) to attend a conference by the authorised officer.

(2) If this part applies under section 335F(2), the authorised officer may, by notice, ask the mining tenement holder and the owner or occupier or other person with an interest in the concerns (also the ***parties***) to attend a conference by the authorised officer about the concerns.

(3) The notice must state when and where the conference will be held and what is to be discussed at the conference.

335H Who may attend conference

(1) Apart from the authorised officer, anyone given notice of the conference may attend and take part in the conference.

(2) Also, with the authorised officer's approval, someone else may be present to help a person attending the conference.

(3) However, a party can not be represented by a lawyer unless the parties agree and the authorised officer is satisfied there is no disadvantage to a party.

335I What happens if a party does not attend

(1) This section applies if a party given notice of a conference under section 335G(2) does not attend.

(2) The authorised officer may hold the conference even though someone given notice of it does not attend.

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(3) A party who attended the conference may apply to the Land Court for an order requiring the party who did not attend to pay the attending party's reasonable costs of attending.

(4) The Land Court must not order the party who did not attend to pay costs if it is satisfied the party had a reasonable excuse for not attending.

(5) If the Land Court makes the order, it must decide the amount of the costs.

Division 3 Conduct of conference

335J Authorised officer's role

(1) In conducting the conference, the authorised officer must endeavour to help those attending to reach an early and inexpensive settlement of the subject of the conference.

(2) Subject to the Common Provisions Act, section 83B, the authorised officer is to decide how the conference is to be conducted.

335K Statements made at conference

Nothing said by a person at the conference is admissible in evidence in a proceeding without the person's consent.

335L Agreement made at conference

If, at the conference, the parties negotiate an agreement about the concerns the subject of the conference, the agreement must be written and signed by or for the parties.

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Part 3 Authorised Officers and other appointments

336 Appointment—authorised officers

(1) The chief executive may, by instrument in writing, appoint a public service officer as an authorised officer to carry out functions under this Act.

(2) The chief executive may from time to time appoint a bailiff or bailiffs to carry out the service and execution of all process, judgments and orders authorised under this Act or any other Act relating to mining and such other duties as may be prescribed.

(3) However, the chief executive may appoint a person under this section to perform a function only if the chief executive considers the person is appropriately qualified to perform the function.

(4) In this section—

functions includes powers.

336A Appointment—authorised persons

(1) The chief executive may, by instrument in writing, appoint an appropriately qualified person as an authorised person to carry out a function mentioned in section 342(1)(a)(i).

(2) An authorised person has the powers of an authorised officer mentioned in 342(1)(a)(i), (f) and (g).

(3) Sections 337, 338 and 339 apply to an authorised person as if a reference to an authorised officer in those sections included a reference to an authorised person.

337 Appointment conditions and limit on powers

(1) An authorised officer holds office on any conditions stated in—

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(a) the authorised officer's instrument of appointment; or

(b) a signed notice given to the authorised officer; or

(c) a regulation.

(2) The instrument of appointment, a signed notice given to the authorised officer or a regulation may limit the authorised officer's powers.

(3) In this section—

signed notice means a notice signed by the chief executive.

338 When office ends

(1) The office of a person as an authorised officer ends if any of the following happens—

(a) the term of office stated in a condition of office ends;

(b) under another condition of office, the office ends;

(c) the authorised officer's resignation under section 339 takes effect.

(2) Subsection (1) does not limit the ways the office of a person as an authorised officer ends.

(3) In this section—

condition of office means a condition under which the authorised officer holds office.

339 Resignation

An authorised officer may resign by signed notice given to the chief executive.

340 Issue of identity card

(1) The chief executive must issue an identity card to each authorised officer.

(2) The identity card must—

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(a) contain a recent photo of the authorised officer; and

(b) contain a copy of the authorised officer's signature; and

(c) identify the person as an authorised officer under this Act; and

(d) state an expiry date for the card.

(3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

341 Production or display of identity card

(1) In exercising a power in relation to a person in the person's presence, an authorised officer must—

(a) produce the authorised officer's identity card for the person's inspection before exercising the power; or

(b) have the identity card displayed so it is clearly visible to the person when exercising the power.

(2) However, if it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for the person's inspection at the first reasonable opportunity.

341A Return of identity card

If the office of a person as an authorised officer ends, the person must return the person's identity card to the chief executive within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

342 Powers of authorised officers

(1) At all times, a person who is an authorised officer may—

(a) have full and free access to and enter any land and whilst thereon may—

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(i) drill, dig, take cores, samples of soil, air, water or rock, make such inspections and carry out such investigations and do such other acts ordinarily connected with prospecting, exploring or mining as the person thinks fit;

(ii) if the person is satisfied that a post, cairn or other thing, not being a survey mark or other thing required by any other Act not to be removed, purporting to mark or apparently marking out boundaries of land for the purposes of this Act do not relate to any existing mining claim, mining lease or application for the grant of a mining claim or mining lease duly made under this Act—remove or cause to be removed that post, cairn or other thing;

(iii) make such investigation and inquiry as is necessary to ascertain whether the provisions of this Act including the conditions applying to any mining tenement or other authority granted under this Act are being complied with;

(b) stop, detain and search any vehicle or vessel used or that the person believes on reasonable grounds is being or is likely to be used for prospecting, exploring or mining;

(c) subject to subsection (11)—question a person found by the person in any place to ascertain whether this Act is being complied with and require a person so found to answer the questions put;

(d) require a person found by him or her committing an offence against this Act or who he or she believes on reasonable grounds has committed an offence against this Act or whose name and address are in the person's opinion reasonably required to state his or her full name and the address of the person's usual place of residence and, if the person suspects on reasonable grounds that a name or address so stated is false, may require evidence of the correctness thereof;

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(e) require a person to produce any books, accounts, records or documents and inspect, make copies of, or take extracts from, the books, accounts, records or documents;

(f) in a case where the person is obstructed or has reasonable grounds to believe that he or she will be obstructed in the exercise of powers or authorities or the discharge of functions or duties—ask another person to help, whereupon it shall be the duty of a person so called to assist the person as required and in accordance with this Act and a person so assisting shall have the same powers and authorities as are conferred under this Act upon the person he or she is assisting;

(g) call to his or her aid a person who the person thinks is competent to assist in the exercise of powers and authorities or the discharge of functions and duties and a person so assisting shall have the same powers and authorities as are conferred under this Act upon the person he or she is assisting;

(h) use such force as is reasonably necessary in the exercise of the powers and authorities or the discharge of the functions and duties conferred or imposed upon the person by this Act;

(i) by order in writing—require a person who has failed to comply with this Act to take within such time as is specified such steps as are specified and to remedy those matters in respect of which noncompliance has occurred;

(j) exercise such other powers and authorities and discharge such other functions and duties as are prescribed.

(2) An order pursuant to subsection (1)(i) shall not prejudice or affect in any way any proceeding or action that has been or may be taken for the failure to comply that resulted in the order, save that the person to whom the order is given is not liable for a continuance of the failure to comply during the time specified therein.

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(3) Before a person enters a part of any place which part is used exclusively as a dwelling house the person shall, save where the person has the permission of the occupier of that part to the entry, obtain from a justice a warrant to enter.

(4) A justice who is satisfied upon the complaint of an authorised officer that there is reasonable cause to suspect—

(a) that in any place an offence against this Act has been, is being or is likely to be committed;

(b) that there is in any place anything in respect of which an offence against this Act has been, is being or is likely to be committed;

may issue a justice's warrant directed to the complainant to enter the place named in the warrant for the purpose of exercising therein the powers conferred on an authorised officer under this Act.

(5) A complaint made under subsection (4) shall be made on oath or affirmation and shall set out the grounds on which the suspicion of the person making the same is based.

(6) A justice who is the chief executive or other officer of the department of the Government for the time being administering this Act is not competent to issue a warrant to which subsections (3), (4) and (8) apply.

(7) A justice who issues a warrant pursuant to subsection (4) shall forward a copy of the warrant to the chief executive.

(8) A warrant shall be, for the period of 1 month from the date of its issue, sufficient authority for the person named therein and all persons acting in aid of the person—

(a) to enter the place specified in the warrant; and

(b) to exercise therein the powers conferred upon the person named therein by or under this Act.

(9) For this section premises that are used as a dwelling house do not include the curtilage of those premises.

(10) For the purpose of gaining entry to a place an authorised officer may call to the officer's aid such persons as the officer

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considers necessary and those persons, while acting in aid in the lawful exercise by the officer of the officer's power of entry, shall have a like power of entry.

(11) Except as provided in section 333E, a person is not obliged under this Act to answer any question or give any information or evidence tending to incriminate the person.

343 Seizure of minerals produced by or vehicles, machinery etc. used in unauthorised mining

(1) If he or she believes on reasonable grounds that any mineral is being or has been mined without authority by or under this Act, an authorised officer may, without further authority, seize that mineral, vehicle, machinery, equipment or thing (the ***subject property***) whereupon the subject property shall be taken to be in the custody of the authorised officer.

(2) An authorised officer who seizes the subject property may—

(a) remove, dismantle and do all such things as the officer thinks necessary to transport the subject property to a place of safekeeping;

(b) direct that mineral so seized be deposited by the person from whom it is seized at a place of safekeeping set out in the direction;

(c) if the subject property is not removed to or deposited at a place of safekeeping, do all such things as are prescribed or, if not prescribed, as the officer thinks fit to show that the subject property has been so seized and is in his or her custody;

(d) carry out any improvement restoration the officer considers appropriate for the land on which the mineral is or has been mined as if a mining tenement had been granted for the land.

(3) Upon an application in writing by the owner of the subject property or a person acting on the owner's behalf or claiming a right to possession of the subject property the authorised

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officer who has the custody of the subject property may release the subject property to the applicant.

(4) If, upon the expiration of 3 months from the date of seizure of the subject property, the subject property is not released under subsection (3) and the subject property is not required as evidence in proceedings that have been instituted for a breach of any provision of this Act or of any other Act relating to mining alleged to have been committed by the person from whom the subject property was seized then, as soon as practicable thereafter, the authorised officer who seized the subject property shall cause to be served by post upon the owner of the subject property, if the owner can be ascertained, at the owner's last place of address known to the officer who seized the subject property notice in writing that the subject property may be collected.

(5) The authorised officer who seized the subject property may, if the officer considers it desirable, give public advertisement to the owner in 1 or more newspapers circulating in the locality in which the subject property was seized or in other localities that the subject property may be collected.

(6) If the subject property is required as evidence in any proceedings instituted for a breach of any provision of this Act or any other Act relating to mining and is not forfeited, the authorised officer who seized the subject property shall, upon the final determination of those proceedings give the notice or advertisement referred to in subsection (4).

(7) If within 20 business days from the date of service or advertisement of the notice, whichever shall last occur, the owner of the subject property or a person acting on the owner's behalf or claiming a right to the possession of the subject property has not obtained possession of the subject property in accordance with the provisions of this section, the authorised officer who seized the subject property may—

(a) by notice published in a newspaper circulating in the locality in which the subject property was seized and, if the officer considers it desirable, in a newspaper circulating in any other locality, advertise that the officer

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will offer the subject property for sale at the place and time stated in the advertisement;

(b) at the time on the day stated in the advertisement (which day shall be not earlier than 10 business days after the date when the advertisement was first published) and at the place stated in the advertisement, offer the subject property for sale unless the owner thereof or a person acting on the owner's behalf or claiming a right to possession thereof has sooner obtained possession of the subject property in accordance with the provisions of this section.

(8) Subject property sold pursuant to subsection (7) shall be sold by public auction unless the Minister otherwise directs.

(9) The proceeds of the sale or disposal of the subject property shall be applied as follows—

(a) firstly, in payment of the expenses of the sale or disposal;

(b) secondly, in payment of the cost of seizure of, removal of and holding the subject property and the service and advertisement of any notice served or advertised under this section;

(c) thirdly, in payment of the cost of any improvement restoration that is, or is likely to be, carried out under subsection (2)(d);

(d) fourthly, in payment of the cost of rehabilitation of land required as a result of the use of the subject property in contravention of this Act or any authority granted under this Act or any other Act relating to mining or under the Environmental Protection Act;

(e) fifthly, in payment of the balance of the proceeds to the owner of the subject property or, if after reasonable inquiry, the owner can not be ascertained, to the public trustee as unclaimed moneys and the provisions of the *Public Trustee Act 1978* with respect to unclaimed moneys shall apply thereto.

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(10) Subject property in the custody of the authorised officer who seized it shall not be delivered to the owner thereof, or to another person acting on the owner's behalf or claiming a right to the possession thereof unless—

(a) the owner or person acting on the owner's behalf or claiming a right to possession of the subject property has applied in writing signed by the owner to the authorised officer for the release of the subject property;

(b) the applicant has furnished proof to the satisfaction of the authorised officer of ownership or right to possession of the subject property and, in the case of the applicant being a person acting on behalf of the owner, has furnished proof to the satisfaction of the authorised officer, of the person's authority to so act;

(c) the applicant has paid all expenses incurred by the authorised officer and not waived pursuant to the provisions of this subsection in connection with the seizure of, removal of and holding the subject property and the service or advertisement of any notice served or advertised by the authorised officer in relation to the availability for collection or intended sale of the subject property;

(d) the applicant has signed a receipt for the delivery of the subject property to the applicant.

(11) If the authorised officer who seized the subject property considers that special circumstances exist, the officer may recommend to the chief executive that the chief executive waive payment of the whole or part of the expenses referred to in subsection (10)(c).

(12) A person who takes delivery, or obtains possession of or removes or attempts to remove from or interferes in any way with subject property which is in the custody of an authorised officer who seized the property except in accordance with the provisions of this section commits an offence against this Act.

(13) In this section—

subject property includes any part of the subject property.

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Part 4 Access to abandoned mines and final rehabilitation sites

344 Definitions for part

In this part—

abandoned mine means a site—

(a) where mining or mining exploration activities have been carried out; and

(b) for which no current mining lease or mining claim is granted; and

(c) for which no environmental authority is in force for activities mentioned in paragraph (a) that were carried out under a mining lease or mining claim that is no longer in force.

authorised person means a person authorised by the chief executive under section 344A(1) or (3).

final rehabilitation site means a site—

(a) where mining or mining exploration activities have been carried out; and

(b) for which an environmental authority or PRCP schedule for the mining activities mentioned in paragraph (a) is in force.

holder, of an environmental authority, means the holder of the environmental authority under the Environmental Protection Act.

PRCP schedule see the Environmental Protection Act, section 112.

rehabilitation activities see section 344A(3).

remediation activities see section 344A(1).

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344A Authorised person to carry out remediation activities for abandoned mine or rehabilitation activities for final rehabilitation site

(1) The chief executive may authorise a person to carry out all or any of the following activities (***remediation activities***) at land on which an abandoned mine exists—

(a) investigate the condition of the land;

(b) cap a mine shaft;

(c) remove, or make safe, structures or equipment at or near the abandoned mine;

(d) clean up pollution remaining at or near the abandoned mine;

(e) repair erosion, or prevent further erosion, of land or vegetation at or near the abandoned mine;

(f) another activity at or near the abandoned mine to make it safe.

(2) Subsection (3) applies to land on which a final rehabilitation site exists.

(3) The chief executive may authorise the holder of an environmental authority or PRCP schedule that is in force for the land to enter the land, or part of the land, to carry out activities (***rehabilitation activities***)—

(a) for the environmental management of the land required of the holder under an environmental requirement under the Environmental Protection Act; or

(b) the holder would be required to carry out, if an EPA surrender application had been made for the environmental authority, to satisfy an EPA administering authority for the application of the approval matters for the application.

(3A) If the holder is not otherwise authorised under this Act to carry out a rehabilitation activity mentioned in subsection (3), an authorisation under the subsection is taken to authorise the

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holder to carry out the activity for the period mentioned in subsection (4).

(3B) However, an authorisation under subsection (3) does not authorise, and is not taken to authorise, the holder to carry out an activity that is an act to which the right to negotiate provisions apply.

(4) An authorisation under subsection (3) must be in writing and state the period for which the holder is authorised to enter the land.

(5) However, the chief executive may authorise the holder to enter the land under subsection (3) only if—

(a) a provision of an Act prevents the holder of an expired mining tenement for the final rehabilitation site from applying to renew the tenement within the renewal period for the tenement; or

(b) an application to renew an expired mining tenement for the final rehabilitation site was refused other than because the Minister was not satisfied about a matter mentioned in—

(i) section 93(4)(b)(i) or (ii); or

(ii) section 286A(1)(a).

(6) If the chief executive authorises a holder to enter land under subsection (3), the following persons are also authorised to enter the land to carry out rehabilitation activities mentioned in the subsection—

(a) an officer or employee of the holder; and

(b) a person engaged by the holder under a contract or other arrangement to carry out the rehabilitation activities.

(7) In this section—

approval matter, for an EPA surrender application, means a matter about which the EPA administering authority must be satisfied under the Environmental Protection Act, section 269.

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EPA administering authority, for an EPA surrender application, means the administering authority for the application under the Environmental Protection Act.

EPA surrender application means a surrender application under the Environmental Protection Act, section 257(1).

expired mining tenement, for a final rehabilitation site, means a mining lease or mining claim for the site—

(a) under which a mining activity was carried out; and

(b) that is no longer in force.

renewal period—

(a) for an expired mining tenement that is a mining claim—means the period stated in section 93(1) in which the holder of the mining claim may apply for its renewal; or

(b) for an expired mining tenement that is a mining lease—means the period that is—

(i) at least 6 months, or any shorter period allowed by the Minister, before the current term of the lease expires; and

(ii) not more than 1 year before the current term expires.

344B Entering land to carry out remediation activities for abandoned mine or rehabilitation activities for final rehabilitation site

(1) This section applies to the following land—

(a) land (***primary land***) on which an abandoned mine or a final rehabilitation site exists;

(b) land (***adjacent land***) that is adjacent to primary land if an authorised person has no other reasonably practicable way of entering the primary land without entering the adjacent land.

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(2) An authorised person may, to carry out remediation activities for the abandoned mine, or rehabilitation activities for the final rehabilitation site, enter land—

(a) if the carrying out of the activities is necessary to preserve life or property—at any time; or

(b) if the entry is authorised under section 344A(3) and paragraph (a) does not apply—at any time after the end of the notice period; or

(c) otherwise—at any time after the earlier of the following days—

(i) the day the owner of the land is given notice of the entry under section 344C;

(ii) the day the occupier of the land is given notice of the entry under section 344C.

(3) However, subsection (2) does not authorise the entry of a structure, or a part of a structure, used for residential purposes without the consent of the occupier of the structure or part.

(4) In this section—

enter includes re-enter.

notice period means a period of 10 business days starting on the earlier of the following—

(a) the day the owner of the land is given notice of the entry under section 344C;

(b) the day the occupier of the land is given notice of the entry under section 344C.

344C Notice of entry

(1) An authorised person entering land under this part must give the owner and the occupier of the land written notice of the entry—

(a) if the carrying out of remediation activities for the abandoned mine, or rehabilitation activities for the final rehabilitation site, is necessary to preserve life or

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property—within 10 business days after the entry is made; or

(b) if the entry is authorised under section 344A(3) and paragraph (a) does not apply—at least 10 business days before entering the land; or

(c) otherwise—before entering the land.

(2) The written notice must state the following—

(a) when the entry was, or is to be, made;

(b) the purpose of the entry;

(c) that the authorised person is permitted under this Act to enter the land without consent or a warrant;

(d) the remediation activities or rehabilitation activities carried out or proposed to be carried out.

344D Obligation of authorised person in carrying out remediation activities for abandoned mine or rehabilitation activities for final rehabilitation site

An authorised person who enters land under this part—

(a) must not cause, or contribute to, unnecessary damage to any structure or works on the land; and

(b) must take all reasonable steps to ensure the person causes as little inconvenience, and does as little other damage, as is practicable in the circumstances.

345 Compensation

(1) The holder of an environmental authority who is authorised under section 344A(3) to enter land must pay compensation to each owner of the land—

(a) in compliance with an agreement (a ***compensation agreement***) between the holder and each owner of the land; or

(b) as decided by the Land Court.

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(2) A compensation agreement has no effect unless the agreement is—

(a) in writing; and

(b) signed by or for the parties to the agreement; and

(c) filed.

(3) At any time before a compensation agreement is made, a person who could be a party to the agreement may apply in writing to the chief executive to have the Land Court decide the amount of compensation and the terms, conditions and times of its payment.

(4) If a person applies to the chief executive under subsection (3), the chief executive must refer the issue of compensation to the Land Court for its decision.

346 Land Court's decision about compensation

(1) This section applies if the chief executive refers a matter to the Land Court under section 345(4).

(2) The Land Court must fix a date for the hearing and immediately give written notice of the date to—

(a) the chief executive; and

(b) each person mentioned in section 345(1)(a).

(3) The date for the hearing must be at least 20 business days after the day it is fixed.

(4) The Land Court must settle the amount of compensation an owner of land is entitled to as compensation for the matters mentioned in section 281(3)(a)(i) to (vi) as a consequence of the grant of the authorisation to enter the land.

(5) In assessing the amount of compensation payable, section 281(4)(a) to (e) applies—

(a) as if the reference in section 281(4)(c) to the application for the grant of the mining lease were a reference to the grant of the authorisation to enter the land; and

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(b) as if the reference in section 281(4)(d) to the lodgement of the relevant application for the grant of a mining lease were a reference to the grant of the authorisation to enter the land; and

(c) as if the reference in section 281(4)(e) to subsection (3) were a reference to subsection (2) of this section; and

(d) with any other changes the Land Court considers necessary.

(6) Section 281(5), (6) and (7) applies in relation to the Land Court's decision about compensation.

347 Application of particular provisions about compensation

(1) Section 282 applies in relation to a decision of the Land Court about compensation under this part as if the reference in section 282(1) to section 281 were a reference to section 346.

(2) Section 283 applies in relation to an agreement or decision about compensation under this part as if a reference in that section to section 279, 280, 281 or 282 included a reference to section 345 or 346.

348 Liability for payment of compensation to native title holders

(1) This section applies if compensation is payable under the *Native Title Act 1993* (Cwlth) to native title holders for the grant of an authorisation to enter land under section 344A(3).

(2) The person liable to pay the compensation is the holder of the environmental authority who is authorised under section 344A(3) to enter the land.

(3) In this section—

native title holders see the *Native Title Act 1993* (Cwlth), section 224.

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Part 5 The Land Court

363 Substantive jurisdiction

(1) The Land Court shall have jurisdiction to hear and determine actions, suits and proceedings arising in relation to prospecting, exploration or mining, to any activity under section 386V, or to any permit, claim, licence or lease granted or issued under this Act or any other Act relating to mining.

(2) Without limiting the generality of subsection (1), the Land Court shall have jurisdiction to hear and determine actions, suits and proceedings with respect to—

(a) the right to possession of or other interest or share in any mining claim, exploration permit, mineral development licence or mining lease; and

(b) the rights and entitlements to minerals mined under any mining tenement or other authority granted under this Act or any other Act relating to mining and to the products of mining; and

(c) the area, dimensions and boundaries of land (including the surface area of land) the subject of a mining tenement; and

(d) any encroachment or trespass upon or interference with or damage to land the subject of a prospecting permit, mining claim, exploration permit, mineral development licence, mining lease or other authority granted under this Act, or to land entered under section 386V, or to the buildings, plant, machinery or equipment thereon; and

(e) any matter arising between applicants or holders in relation to prospecting, exploring or mining, or arising between applicants or holders and owners of land in relation to prospecting, exploring or mining; and

(ea) any dispute or other matter arising between persons identified in native title protection conditions as an explorer or as a native title party, if the conditions—

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(i) under section 25AA, are included in the conditions imposed on a prospecting permit; or

(ii) under section 141AA, are included in the conditions determined for an exploration permit; or

(iii) under section 194AAA, are included in the conditions determined for a mineral development licence; and

(eb) any dispute or other matter arising between a person carrying out an activity under section 386V on land and the owner or occupier of the land; and

(f) any determination or review of compensation as provided for under this Act or any other Act relating to mining; and

(g) the enforcement of any agreement or determination as to compensation under this Act or any other Act relating to mining; and

(h) any assessment of damage, injury or loss arising from activities purported to have been carried on under the authority of this Act, including under section 386V, or any other Act relating to mining; and

(ha) an authorisation to enter land under section 344A(3); and

(i) any application required by this Act or any Act relating to mining to be made or heard in the Land Court.

(3) The Land Court also has jurisdiction to hear and determine actions, suits and proceedings with respect to any demand for debt or damages arising out of or made in respect of—

(a) the carrying on of prospecting, exploring or mining; or

(b) any agreement relating to prospecting, exploring or mining; or

(c) the carrying out of an activity under section 386V.

(4) This section does not confer jurisdiction on the Land Court in relation to the recovery of wages or amounts owing under an industrial award or agreement.

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364 Application for interim orders by remote means

(1) Where by reason of distance, urgency or other circumstances affecting a particular case, it is impracticable for a party to a cause or matter within the jurisdiction, under this Act, of the Land Court to make application to the Land Court for an order for the detention or preservation of any property or thing, being the subject matter of the litigation or as to which any question may arise therein, the party may make the application to the chief executive in the same manner that an application could be made to the Land Court.

(2) Where an application is made pursuant to subsection (1) to the chief executive, the chief executive shall forthwith advise the Land Court (whether by means of telephone, radio, telex, facsimile transmission or other facility for distance communication) of the application and of all relevant details and any supporting evidence produced to the chief executive in respect of the application.

(3) On the giving of the advice under subsection (2), the Land Court may make any order it could have made had the application been made in its presence.

(4) Upon making an order pursuant to subsection (3) the Land Court shall forthwith inform the chief executive by like means referred to in subsection (2) of the order and the chief executive must, as soon as practicable, give each party a copy of the order.

(5) The order must state the day and place that the order was made.

370 Jurisdiction of Supreme Court

(1) The Supreme Court has jurisdiction to hear and determine any proceeding challenging or otherwise relating to the validity of any grant that has been made pursuant to this Act or any Act repealed by this Act or any other Act relating to mining and, notwithstanding any other Act or law, that proceeding shall be heard and determined in that court only.

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(2) It is immaterial that the Crown is not a party to the proceeding.

(3) If the grant in question is declared by the Supreme Court to be invalid, the declaration binds the Crown and a copy of the judgment or order of the court in respect thereof shall be served by the party who benefits from that declaration on the chief executive within 15 business days from the date of that judgment or order.

378 Power to order deposit of mineral etc.

(1) At any stage after proceedings, under this Act, before the Land Court have been commenced, the Land Court may, upon an application duly made by a party thereto and subject to such terms as to costs or otherwise as the Land Court thinks fit, direct a party to that proceeding having possession, custody or control of any money, mineral, chattel, ore or other thing or which may later come into the possession, custody or control of that party to deposit it in accordance with the order with such person at the place and upon the terms specified in the order to abide the determination of the proceeding or in the event of an appeal from that determination, the judgment on the appeal.

(2) An application referred to in subsection (1) is not duly made if the Land Court is not satisfied that the applicant has given at least 12 hours notice that the applicant proposes to make the application to—

(a) all parties to the proceeding who may wish to oppose the application; or

(b) such of the parties referred to in paragraph (a) as, in the opinion of the Land Court, are sufficiently representative of all those parties.

(3) Where an appeal is lodged against a determination of a proceeding determined by the Land Court, for the purposes of subsection (1), that proceeding is not determined until judgment on the appeal.

(4) An order made under subsection (1) shall specify—

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(a) the person with whom; and

(b) the place at which; and

(c) the time or times within which; and

(d) the terms upon which;

any money, mineral, chattel, ore or other thing specified in the order must be deposited.

380 Land Court may order survey

If, at any time before or during the hearing for a proceeding, under this Act, in the Land Court, it appears to the Land Court that it is necessary for the proper determination of the proceeding that a survey be made of any land, water, stack or other accumulation of ore, buildings or any other thing the Land Court may order any party to the proceeding as, to it, appears just to cause the survey to be made and the costs of or incidental to the survey shall be costs in the proceeding and shall be paid as the Land Court orders.

381 Power of Land Court to order surrender of minerals

(1) The Land Court may, upon determining any proceeding before it, order that a person ordered by the Land Court to pay any amount in respect of a debt, damages or costs shall, within the time appointed by the Land Court, deliver to the party to whom payment is ordered to be made or to the Land Court itself for delivery to such party any ore or mineral in the possession of and being the property of that person in satisfaction or part satisfaction of the amount ordered to be paid and for this purpose may fix a value of that which is ordered to be delivered.

(2) An order made under subsection (1) shall not prejudice the recovery of the amount ordered to be paid by any other process or, where delivery of ore or mineral is made in part satisfaction of the amount ordered to be paid, the recovery of the balance of that amount.

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Part 6 Releasing required information

382 Public release of required information

(1) A holder of a mining tenement is taken to authorise the chief executive to do the following in relation to required information for the mining tenement after the end of any confidentiality period prescribed by regulation—

(a) publish, in the way prescribed by regulation, the required information for public use;

(b) on payment of a fee prescribed by regulation, make the required information available to any person.

(2) A confidentiality period prescribed under subsection (1) does not apply if the required information is about an authorised activity carried out in an area that is no longer in the area of the mining tenement.

Example—

The required information is a seismic survey carried out on particular land in the area of an exploration permit. Subsection (1) does not apply if all of that land is reduced from the area of the permit.

(3) The authorisation is not affected by the ending of the mining tenement.

383 Minister may use required information

(1) A holder of a mining tenement is taken to authorise the chief executive to use the required information for the mining tenement for—

(a) purposes reasonably related to this Act; and

(b) the services of the State.

(2) The authorisation is not affected by the ending of the mining tenement.

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Chapter 14 Miscellaneous provisions

386J Request to applicant about application

(1) For a relevant application under this Act, the chief executive may, by written notice, require the applicant to do all or any of the following within a stated reasonable period—

(a) complete or correct the application if it appears to the chief executive to be incorrect, incomplete or defective;

(b) give the chief executive or another stated officer of the department additional information about, or relevant to, the application;

Example—

The application is for a mining lease. The chief executive may require a document, prepared by an appropriately qualified person, independently verifying a resource model given in the proposed mining program for the lease.

(c) give the chief executive or another stated officer of the department an independent report by an appropriately qualified person, or a statement or statutory declaration, verifying all or any of the following—

(i) any information included in the application;

(ii) any additional information required under paragraph (b);

(d) define or further define, in a stated way, the boundary of the area of the proposed mining tenement the subject of the application.

(2) For subsection (1)(b), if the application is for a mining tenement, a required document may include a survey or resurvey of the area of the proposed tenement carried out by a person who is a cadastral surveyor under the *Surveyors Act 2003*.

(3) For subsection (1)(c), the notice may require the statement or statutory declaration—

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(a) to be made by an appropriately qualified independent person or by the applicant; and

(b) if the applicant is a corporation—to be made for the applicant by an executive officer of the applicant.

(4) The giving of a statement for subsection (1)(c) does not prevent the chief executive from also requiring a statutory declaration for the subsection.

(4A) Without limiting subsection (1)(d), the chief executive may require the applicant to install, move or remove a physical monument.

(5) The applicant must bear any costs incurred in complying with the notice.

(6) The chief executive may extend the period for complying with the notice.

(7) In this section—

application does not include—

(a) an application to a court or tribunal; or

(aa) an EP tender; or

(b) an internal review application under chapter 13, part 1.

executive officer, of a corporation, means a person who is concerned with or takes part in its management, whether or not the person is a director or the person's position is given the name of executive officer.

information includes a document.

relevant application means an application, other than an application relating to a prospecting permit.

386K Refusing application for failure to comply with request

(1) This section applies for an application if—

(a) the chief executive gives a notice under section 386J for the application; and

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(b) the period stated in the notice for complying with it has ended; and

(c) the request has not been complied with to the satisfaction of the chief executive.

(2) The Minister may refuse the application.

(3) To remove any doubt, subsection (2) applies despite another provision of this Act that provides the application must be granted in particular circumstances or if particular requirements have been complied with.

386L Notice to progress relevant applications

(1) The Minister may by notice require an applicant for, or to renew, a relevant mining tenement to, within a stated reasonable period, do any thing required of the applicant under this Act or another Act to allow the application to be decided or the tenement to be granted or renewed.

(2) However, the period for complying with the notice must be at least 20 business days after the notice is given.

(3) The Minister may extend the period for complying with the notice.

(4) The Minister may reject the application if the applicant does not comply with the requirement.

(4A) This section does not apply in relation to an EP tender.

(5) In this section—

relevant mining tenement means a mining tenement other than a prospecting permit.

386M Particular criteria generally not exhaustive

(1) This section applies if another provision of this Act permits or requires the Minister to consider particular criteria in deciding an application.

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(2) To remove any doubt, it is declared that the Minister may, in making the decision, consider any other criteria the Minister considers relevant.

(3) However, subsection (2) does not apply—

(a) in relation to an EP tender; or

(b) if the provision otherwise provides.

(4) In this section—

criteria includes issues and matters.

386N Particular grounds for refusal generally not exhaustive

(1) This section applies if another provision of this Act provides for particular grounds on which the Minister may refuse an application.

(2) To remove any doubt, it is declared that, unless the other provision otherwise provides, the Minister may refuse the application on another reasonable and relevant ground.

(3) This section does not apply to an EP tender.

(4) In this section—

refuse, an application, includes refuse the thing the subject of the application.

386O Place or way for making applications, giving, filing, forwarding or lodging documents or making submissions

(1) This section applies to any of the following under this Act—

(a) the making of an application;

(b) the giving of a document to the Minister or chief executive;

(c) the filing, forwarding or lodging of a document;

(d) the making of a submission.

(1A) However, this section does not apply to the giving of a document to which chapter 11, part 3, division 9 applies.

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(2) The application, document or submission may be made, given, filed or lodged only—

(a) at the following place (the ***required place***)—

(i) the office of the department provided for under the relevant approved form for that purpose;

(ii) if the relevant approved form does not make provision as mentioned in subparagraph (i) or if there is no relevant approved form—the office of the department notified on the department's website; or

(b) in the way prescribed under a regulation.

(3) Without limiting subsection (2)(b), the way prescribed under a regulation may include to make, give, file or lodge the application, document or submission at another place.

(4) The document may be forwarded only to the required place or in the way prescribed under a regulation.

(5) Without limiting subsection (4), the way prescribed under a regulation may include to forward the document to another place.

(6) This section does not apply to the following—

(a) the making of an application to the Land Court or the tribunal;

(b) the lodging of any of the following—

(i) a notice of appeal to the Land Court under section 86(2)(a), 282(2)(a) or 318AAZO(1);

(ii) a notice under section 753;

(iii) a report under section 761;

(iv) a proposed initial development plan for a lease under section 758;

(c) the giving of a report to the Minister under section 141(1)(e) or 194(1)(g);

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(d) the giving of a report or other document mentioned in section 318AAH(1)(g) under that section.

386P Requirements for making application

(1) This section applies to a purported application, other than for the grant of a prospecting permit, mining claim or mining lease or to the Land Court or the tribunal, not made under the requirements under this Act for making the application.

(2) The chief executive must refuse to receive or process the purported application.

(3) However, the chief executive may decide to allow the application to proceed and be decided as if it did comply with the requirements if the chief executive is satisfied the application substantially complies with the requirements.

(4) If the chief executive decides to refuse to receive or process the purported application, the chief executive must—

(a) inform the applicant of the decision; and

(b) refund the application fee to the applicant.

(4A) This section does not apply to an EP tender.

386PA Chief executive's power to refund application fee

(1) This section applies if, under this Act, an application for a resource authority is withdrawn, abandoned, refused or rejected.

(2) The chief executive may refund all or part of the application fee.

(3) In this section—

resource authority does not include a water monitoring authority.

386Q Period of effect of particular later development plans

(1) This section applies if—

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(a) before the commencement of this section, the holder of a mining lease was given, under section 318EH, a notice (the ***notice***) of the approval of a proposed later development plan for the lease; and

(b) the notice was given to the holder of the lease after the start of the plan period for the proposed plan as stated in the proposed plan.

(2) For an Act, the approval has effect, and is taken to have had effect, from—

(a) the start of the plan period; or

(b) if the notice stated a later day of effect—the later day.

(3) The notice is, and is taken always to have been, valid and effective—

(a) even though the notice was given after the commencement of the plan period stated for the proposed plan; and

(b) whether or not the notice purported, expressly or impliedly, to approve the carrying out of work under the plan before the approval was given; and

(c) regardless of the extent to which section 318EF(b) was complied with.

Example for paragraph (c)—

It does not matter if a development plan was considered under section 318EF(b) but was not current at the time of its consideration.

(4) For this section, it does not matter if the notice was required to be an information notice as mentioned in section 318EH(2)(b) or (c).

(5) This section applies despite chapter 8, part 9.

386R Required way for defining boundary of proposed mining tenement

(1) This section applies if a provision about an application for the grant of a mining tenement requires the application to define

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the boundary of the area of the proposed tenement or another area of land.

(2) The boundary must be defined in a way that, in the chief executive's opinion—

(a) is unambiguous; and

(b) accurately shows where the boundary is located on the ground or allows the boundary's location on the ground to be accurately worked out.

Examples of ways the boundary of a proposed mining tenement may be defined—

- a way stated in a guideline under the practice manual
- using GPS coordinates
- visually, by marking the boundary on a map or aerial photograph
- by reference to identifiable points of reference such as known survey marks, infrastructure or the boundaries of lots or other mining tenements, watercourses or roads

(3) Without limiting subsection (2), the boundary may, but need not, be defined by reference to 1 or more physical monuments.

(4) Also, if the chief executive has given the applicant a notice under section 386J or a notice applying to the application has been published under section 386S, the boundary must be defined in the way stated in the notice.

386S Boundary definition notice

(1) This section applies if a provision about an application for the grant of a mining tenement requires the application to define the boundary of the area of the proposed tenement.

(2) The chief executive may, by notice, make directions about the way in which the boundary of the proposed mining tenement must be defined.

(3) The notice may apply to—

(a) applications of the type stated in the notice; or

(b) applications relating to a stated area.

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(4) Without limiting subsection (2), the notice may, but need not, direct that the boundary be defined by reference to 1 or more physical monuments.

(5) The chief executive must publish the notice in at least 1 of the following ways—

(a) in the gazette;

(b) on the department's website;

(c) another way the chief executive considers appropriate.

(6) An applicant for the grant of a mining tenement must bear any costs incurred in complying with the notice.

386T Requirement to define or further define mining tenement boundary

(1) The chief executive may, by written notice, require a person who holds a mining tenement to define or further define the boundary of the area of the mining tenement in a stated way and within a reasonable stated period.

(2) Without limiting subsection (1), the chief executive may require the person to install, move or remove a physical monument.

(3) The chief executive may, by written notice to the person, extend the stated period.

(4) The person must—

(a) comply with the notice; and

(b) bear any costs incurred in complying with the notice.

386U Requirement to remove physical monuments

(1) Subsection (2) applies if—

(a) for the purpose of applying for the grant of a mining tenement (the ***intended application***), a person installed 1 or more physical monuments to define the boundary of the area of the proposed tenement; and

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(b) either—

(i) the intended application is not made within 5 business days after the last of the physical monuments is installed; or

(ii) the intended application is refused, rejected, withdrawn or abandoned.

(2) The person must remove all of the physical monuments.

(3) Subsection (4) applies if—

(a) a physical monument defines part of the boundary of the area of a mining tenement; and

(b) the boundary changes; and

(c) after the change, the physical monument no longer defines any of the boundary.

(4) The holder of the mining tenement must remove the physical monument.

(5) Subsections (2) and (4) do not apply to a physical monument if there is a survey mark on the monument.

386V Carrying out activity on land for boundary definition purposes

(1) This section applies if it is necessary for a person to enter land (the ***land***) for the purpose of complying with—

(a) section 386R or 386U; or

(b) a notice under section 386J, 386S or 386T.

Example—

It becomes necessary for a person to enter land to define a boundary by installing physical monuments or taking GPS coordinates.

(2) The person may, for that purpose, carry out the following activities—

(a) enter and leave the land using a reasonable type of transport;

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(b) cross other land to the extent necessary to gain reasonable access to the land;

(c) another activity on the land that is necessary for the purpose.

(3) However, the carrying out of the activity is subject to—

(a) any conditions imposed by the Minister under section 386W(5); and

(b) the conditions stated in schedule 1; and

(c) the conditions prescribed by regulation.

(4) The chief executive may, in a notice under section 386J, 386S or 386T, impose other conditions on the carrying out of the activity, including, for example, that the activity must be carried out within a stated period.

(5) A person may appeal against the chief executive's decision to impose a condition under subsection (4) to the Land Court.

(6) Sections 39 to 42 apply to the appeal and, for that purpose, the person is an aggrieved person.

(7) This section does not authorise the entry of land in a fossicking area.

386W Dispute about carrying out activity under s 386V in area of prospecting permit or non-mining resource authority

(1) This section applies if there is a dispute about whether an activity may be carried out under section 386V on land in the area of a prospecting permit or non-mining resource authority, between the following persons (the ***parties***)—

(a) the person carrying out, or intending to carry out, the activity;

(b) the holder of the prospecting permit or non-mining resource authority.

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Note—

See schedule 1, section 5 for conditions on a person carrying out an activity under section 386V on land in the area of a prospecting permit or non-mining resource authority held by someone else.

(2) Either of the parties may, by a notice in the approved form, ask the Minister to decide whether the activity may be carried out under section 386V.

(3) Before making the decision, the Minister must give the parties a reasonable opportunity to make submissions about the request within a reasonable period.

(4) The Minister must, after complying with subsection (3) and considering any submission made under that subsection, decide the matter and give the parties notice of the decision.

(5) The Minister may impose conditions on any decision that the activity may be carried out.

(6) The Minister's decision binds the parties.

(7) In this section—

non-mining resource authority means a resource authority under the Common Provisions Act that is not a mining tenement.

386X Report about activity under s 386V to chief executive by owner or occupier of land

(1) This section applies if—

(a) a person claims to be carrying out an activity under section 386V on land; and

(b) the owner or occupier of the land considers that the person—

(i) is not authorised to carry out the activity on the land; or

(ii) is contravening a condition of carrying out the activity or a provision of this Act.

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(2) The owner or occupier may report the matter to the chief executive.

(3) The chief executive must ensure the matter is investigated and advise the owner or occupier who made the report of any action taken in relation to the report.

386Y Person carrying out activity under s 386V contravening condition or this Act

(1) This section applies if, because of an investigation under section 386X or otherwise, the chief executive considers on reasonable grounds a person carrying out an activity under section 386V on land is contravening—

(a) a condition of carrying out the activity; or

(b) a provision of this Act.

(2) The chief executive may give the person a written notice—

(a) stating the chief executive considers the person is contravening the condition or the provision; and

(b) inviting the person to show cause, within the period stated in the notice, why the person's authority to carry out the activity under section 386V should not end.

(3) If, after having regard to any submissions made under subsection (2)(b), the chief executive still considers on reasonable grounds the person is contravening a condition of carrying out the activity under section 386V or a provision of this Act, the chief executive may give the person a written notice stating—

(a) the chief executive considers the person is contravening the condition or the provision; and

(b) under subsection (4), the person is no longer authorised to carry out the activity on the land.

(4) A person given a notice under subsection (3) is no longer authorised to carry out the activity on the land.

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(5) A person given a notice under subsection (3) may appeal to the Land Court against the chief executive's decision to give the notice.

(6) Sections 39 to 42 apply to the appeal and, for that purpose, the person is an aggrieved person.

388 Notice of change of address for service

(1) Subsection (2) applies to a person who, under this Act, gives the Minister or chief executive (each the ***official***) the person's address for service.

(2) If the address for service changes during the time it may be required under this Act, the person must immediately notify, in the approved form, the official to whom it was given.

(3) In this section—

address for service, for a person, means the person's address, or the name and address of someone else, for service of notices on the person.

390 Priority of competing applications

(1) The types of grant to which subsection (2) applies are—

(a) mining claims;

(b) exploration permits;

(c) mining leases.

(2) Except as provided in sections 63, 134A, 185 and 251, an application for a type of grant that is effectively lodged prior to another application for a different type of grant in respect of the whole or part of the same land being effectively lodged shall take priority over that other application for the purpose of the consideration of the application.

(3) For the purposes of subsection (2), an application is effectively lodged—

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(a) in the case of an application for the grant of a mining claim or a mining lease upon the acceptance of the lodgement of the application;

(b) in the case of an application for the grant of an exploration permit on the day next following the acceptance of the lodgement of the application.

(4) If the chief executive is of the opinion that the circumstances of the lodgement of an application for the grant of a mining claim and an application for the grant of a mining lease made in respect of or including the same land are such that the applications should be treated as having been lodged simultaneously, the chief executive may treat the applications as having been lodged simultaneously and shall determine their respective priorities by ballot.

(5) The chief executive shall advise all applicants when and where the ballot is to be held.

(6) This section does not apply to EP tenders.

391 Restriction on grants etc.

(1) The Minister may by gazette notice—

(a) prohibit the grant, or applications for the grant, of mining tenements; or

(b) determine that a mining tenement must not be granted over an area that exceeds a specified area; or

(c) provide that a single person must not, at any time, be the holder (whether alone or with others) of more than a specified number of exploration permits, mineral development licences or mining leases; or

(d) provide that a single person must not, at any time, be the holder (whether alone or with others) of—

(i) mining leases the aggregate area of which exceeds a specified area; or

(ii) mineral development licences the aggregate area of which exceeds a specified area; or

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(iii) exploration permits the aggregate area of which exceeds a specified area; or

(e) require that an application for the grant of a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease be referred to any of the following bodies seeking its views on the application—

(i) a stated department;

(ii) a Commonwealth Government department;

(iii) a local government;

(iv) a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*;

(v) a GOC.

(2) The Minister must consider the public interest before acting under subsection (1).

(3) A restriction or requirement under subsection (1) that applies to an area does not affect the granting or renewal of any of the following mining tenements for all or part of the area—

(a) a mining tenement applied for before the restriction took effect (the ***prerequisite tenement***);

(b) a mining tenement of the same type as the prerequisite tenement applied for in the area of the prerequisite tenement;

(c) a higher level of mining tenement to the prerequisite tenement applied for in the area of the prerequisite tenement.

(4) More than 1 mining tenement may be granted for the area of a prerequisite tenement under subsection (3).

(5) However, a mining tenement mentioned in subsection (3) can not be granted for land outside the area of the prerequisite tenement.

(6) In this section—

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higher level, of mining tenement to the prerequisite tenement, means—

(a) if the prerequisite tenement is a prospecting permit—a mining claim or mining lease; or

(b) if the prerequisite tenement is a mining claim—a mining lease; or

(c) if the prerequisite tenement is an exploration permit—a mineral development licence or mining lease; or

(d) if the prerequisite tenement is a mineral development licence—a mining lease.

391A Restriction on decisions or recommendations about mining tenements

(1) This section applies if, apart from this section, a person may—

(a) decide to grant, vary or renew a mining tenement, other than a mining tenement for small scale mining activities; or

(b) recommend that a mining tenement, other than a mining tenement for small scale mining activities, be granted, varied or renewed.

(2) However, this section does not apply to a decision or recommendation by the Land Court.

(3) The decision or recommendation to grant, vary or renew must not be done or made unless a relevant environmental authority has been issued.

(5) This section applies despite any other provision of this Act.

(6) In this section—

relevant environmental authority means an environmental authority under the Environmental Protection Act for all activities authorised, or to be authorised, under the mining tenement.

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391C Small scale mining code

(1) A regulation may make a code, for managing impacts of small scale mining activities carried out under a mining claim or exploration permit (a ***small scale mining code***), that—

(a) states guidelines for small scale mining activities to—

(i) ensure the activities are carried out in an environmentally responsible way; and

(ii) ensure land subject to the activities is managed responsibly; and

(iii) minimise conflicts about land use because of the carrying out of the activities; and

(iv) ensure land is rehabilitated, and improvements on the land are restored to an appropriate condition, after the small scale mining activities carried out on the land are completed; and

(b) imposes on the mining claim or exploration permit mandatory conditions concerning the conduct of authorised activities on land.

(2) If a mandatory provision of the small scale mining code is inconsistent with a condition of a mining claim or exploration permit, the mandatory provision prevails to the extent of the inconsistency.

392 Substantial compliance with Act may be accepted as compliance

(1) Where this Act provides that in respect of any matter, the Governor in Council, the Minister, the chief executive, the Land Court or the tribunal may act if anything has been done in the prescribed way, but that thing has not been done in the prescribed way, the Governor in Council, the Minister, the chief executive, the Land Court or the tribunal may, if satisfied that there has been substantial compliance with the prescribed way in respect of that thing, record that fact in writing and may so act and the thing shall be deemed to have been done in the prescribed way.

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(2) Subsection (1) is subject to section 386P.

393 Prescribed person excused for neglect or default of other entities or circumstances beyond person's control

(1) If a prescribed person is required to do anything to comply with a provision of this Act and the prescribed person proves to the satisfaction of the Minister that—

(a) the prescribed person had been unable to do that thing as prescribed by reason of the neglect or default of the Minister, chief executive, Land Court, tribunal or an authorised officer or of circumstances over which the prescribed person did not have any control; and

(b) the prescribed person has done all that the prescribed person could to comply with that provision, whether or not within any time prescribed therefor;

the Minister may determine in writing that the prescribed person has complied with that provision and the prescribed person shall be deemed to have complied with that provision accordingly.

(2) A determination made under subsection (1) may be conditional upon the prescribed person complying with any specified conditions.

(3) In this section—

prescribed person means—

(a) a holder of, or applicant for the grant of, a mining tenement; or

(b) a person who is carrying out, or intends to carry out, an activity under section 386V.

394 Declaration of State forests etc. over land subject to grants

(1) For the purposes of setting apart and declaring a State forest, timber reserve or forest entitlement area under the *Forestry*

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Act 1959, Crown land that is in the area of an exploration permit shall be Crown land within the meaning of that Act.

(2) Prior to taking action to set apart and declare Crown land as a State forest, timber reserve or forest entitlement area under the *Forestry Act 1959* which land is in the area of a mining claim, mineral development licence or mining lease or an application therefor, the views of the Minister shall be obtained and taken into account and, if the Minister agrees, that land shall be Crown land within the meaning of the *Forestry Act 1959*.

(3) The agreement of the Minister may be subject to compliance with specified conditions.

395 Act's application to holder of fossickers licence

A holder of a fossickers licence under the *Fossicking Act 1994* does not need a prospecting permit or mining claim to fossick under the licence.

396 Application of other Acts

Except as otherwise provided in this Act or any other Act relating to mining, the provisions of the *Recreation Areas Management Act 2006* or of any other Act shall not operate to restrict the entry of persons on land under the authority of any mining tenement or other authority granted under this Act or any other Act relating to mining.

396A Transfer of coal exploration or production well to petroleum tenure holder

(1) Subsection (3) permits, in particular circumstances, the transfer of a coal exploration or production well by a mining tenement holder.

(2) A purported transfer of a coal exploration or production well is of no effect unless—

(a) the transfer is permitted under subsection (3); and

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(b) the requirements under subsection (3) for making the transfer have been complied with.

(3) The mining tenement holder may transfer the coal exploration or production well to the holder of a petroleum tenure if—

(a) it is in the area of the mining tenement and the petroleum tenure; and

(b) a notice in the approved form and the transfer fee prescribed under a regulation have been lodged.

(4) If the well is transferred under subsection (3), any obligation the transferor had under this Act or another law in relation to the coal exploration or production well ceases.

(5) In this section—

coal exploration or production well means a well or drill hole drilled and authorised under this Act to—

(a) explore for coal or coal seam gas; or

(b) mine or produce coal or coal seam gas; or

(c) monitor the mining or production of coal or coal seam gas; or

(d) monitor the impacts of an activity mentioned in paragraphs (a) to (c).

transfer, of a coal exploration or production well means a transfer of—

(a) the control of and responsibility for the well; and

(b) the ownership of any works constructed in connection with the well.

397 Limitation of owner's or occupier's tortious liability for authorised activities

(1) This section applies to an owner or occupier of land in the area of a mining tenement if—

(a) someone else carries out an authorised activity for a mining tenement on the land; or

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(b) someone else carries out an activity on the land and, in doing so, purports to be carrying out an authorised activity for a mining tenement.

(2) This section also applies to an owner or occupier of land if someone else carries out an activity under section 386V on the land.

(3) The owner or occupier is not civilly liable to anyone else for a claim based in tort for damages relating to the carrying out of the activity.

(4) However, subsection (3) does not apply to the extent the owner or occupier, or someone else authorised by the owner or occupier, caused, or contributed to, the harm the subject of the claim.

(5) This section applies—

(a) despite any other Act or law; and

(b) for land in the area of a mining tenement, even though this Act or the mining tenement prevents or restricts the carrying out of the activity as an authorised activity for the mining tenement.

(6) Subject to subsection (3), in this section, the terms *claim*, *damages* and *harm* have the same meaning that they have under the *Civil Liability Act 2003*.

397A Duty to avoid interference in carrying out authorised activities

A person who carries out an authorised activity for a mining tenement, or an activity under section 386V, must carry out the activity in a way that does not unreasonably interfere with anyone else carrying out a lawful activity.

Maximum penalty—500 penalty units.

397B Obstruction of person carrying out authorised activity

(1) A person must not, without reasonable excuse, obstruct a mining tenement holder from—

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(a) entering or crossing land to carry out an authorised activity for the mining tenement if the Common Provisions Act, chapter 3, to the extent the parts are relevant, have been complied with in relation to the entry; or

(b) carrying out an authorised activity for the mining tenement on the land.

Maximum penalty—500 penalty units.

(2) A person must not, without reasonable excuse, obstruct a person carrying out an activity under section 386V.

Maximum penalty—500 penalty units.

(3) If a person has obstructed another person (the ***authority holder***) from carrying out an activity mentioned in subsection (1) or (2) and the authority holder decides to proceed with the carrying out of the activity, the authority holder must warn the person that—

(a) it is an offence to obstruct the authority holder unless the person has a reasonable excuse; and

(b) the authority holder considers the person's conduct is an obstruction.

(4) In this section—

obstruct includes assault, hinder, resist and attempt or threaten to assault, hinder or resist.

398 Delegation by Minister and chief executive

(1) The Minister or the chief executive may delegate his or her functions under this Act to an appropriately qualified officer or employee of the department.

(1A) Also, the chief executive may delegate the chief executive's functions under section 344A(3) to the chief executive of the department in which the Environmental Protection Act is administered.

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(2) However, the following functions of the Minister can not be delegated—

(a) granting a mining lease;

(b) renewing a mining lease.

(3) In this section—

function includes power.

399 Mode of service of documents

(1) A notice or other document required by this Act to be given or served by a prescribed person to an owner of land shall be duly given or served if—

(a) it is served personally upon the owner; or

(b) it is sent by registered post to the place of residence or business of the owner last known to the prescribed person.

(2) Except as provided in subsection (1), a direction, notice, order or other document required or authorised by this Act to be given or served upon any person by the Minister, Land Court, tribunal authorised officer or other person shall be duly given or served if—

(a) it is served personally upon the person to whom it is directed; or

(b) it is left at the place of residence or business of the person to whom it is directed last known to the person who gives or serves it; or

(c) it is sent by registered post to the place of residence or business of the person to whom it is directed last known to the person who gives or serves it.

(3) Where this Act in respect of a matter requires or authorises a person's name and address to be specified then for the purpose of service of any direction, notice, order or other document in respect of that matter the last address of that person recorded in the register in respect of that matter shall be deemed to be

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the person's place of residence or business last known to the person so giving or serving.

(4) Where this Act in respect of a matter requires or authorises the name and address for service of a person upon whom any notice may be served on behalf of another person or other persons to be specified, then service upon the person so specified shall be deemed to be service upon the other person or other persons.

(4A) This section does not apply in relation to the giving of a document to which chapter 11, part 3, division 9 applies.

(5) In this section—

prescribed person means—

(a) a holder of, or applicant for the grant of, a mining tenement; or

(b) a person who is carrying out, or intends to carry out, an activity under section 386V.

registered post means a type of post that requires the recipient's signature as proof of receipt.

400 Acting in aid of authorised officer

Whenever an authorised officer is empowered or required by this Act to cause any act to be performed it shall be lawful for any person to perform such an act under the oral authority of the authorised officer where the act is performed in his or her presence or under the written authority of the authorised officer where the act is performed in his or her absence.

401 Protection against liability

No act, omission, thing or decision done or made by the Minister, the chief executive, the Land Court, the tribunal, an authorised officer or anyone else acting under the authority of any of those persons as provided by this Act—

(a) for the purpose of giving effect to any provision of this Act; or

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(b) purporting to be for the purpose of giving effect to any provision of this Act and done or made in good faith and without negligence;

shall render the Crown, the Minister, the chief executive, the Land Court, the tribunal, the authorised officer or other person liable at the suit of any person.

401A Protection against liability as condition of approval

(1) This section applies if the holder of a mining tenement, granted after 1 January 1994, applies for an approval under the Common Provisions Act, chapter 2, part 1.

(2) As a condition of the grant of the approval, the Minister or chief executive may require any or all of the parties for the mining tenement—

(a) to waive any right to make a claim against the State because of a relevant matter; or

(b) to agree to keep the State, Minister or chief executive harmless against loss arising out of a claim made by anyone because of a relevant matter.

(3) This section is taken to have commenced on 1 January 1994.

(4) In this section—

claim includes any action, proceeding and demand.

holder of a mining tenement that is a mining lease includes an applicant for the mining lease.

mining tenement means—

(a) a mining claim, exploration permit, mineral development licence or mining lease; or

(b) an interest in a mining claim, exploration permit, mineral development licence or mining lease.

parties, for a mining tenement, means the following—

(a) the holder of the mining tenement;

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(b) for a transfer of the mining tenement—the proposed transferee;

(c) for a mortgage of the mining tenement—the proposed mortgagee;

(d) for a sublease of the mining tenement—the proposed sublessee;

(e) if the mining tenement is subject to a mortgage—the mortgagee.

relevant matter means—

(a) the existence of native title; or

(b) a claim or decision that native title to any land in the area of the mining tenement exists; or

(c) a claim or decision that the grant of the mining tenement, or an approval under the Common Provisions Act, chapter 2, part 1, is invalid because of—

(i) the existence of native title; or

(ii) a claim or decision that native title to any land in the area of the mining tenement exists; or

(iii) the *Native Title Act 1993* (Cwlth); or

(iv) any other law relating to native title; or

(d) any action taken under the mining tenement by the holder of the mining tenement, or any person acting for or with the authority of the holder, is unlawful or unauthorised because of—

(i) the existence of native title; or

(ii) a claim or decision that native title to any land in the area of the mining tenement exists; or

(iii) the *Native Title Act 1993* (Cwlth); or

(iv) any other law relating to native title.

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402 Offences with respect to unauthorised mining etc.

(1) A person shall not—

(a) enter or be upon land to carry on prospecting, exploration or mining unless the person is the holder of the relevant authority granted pursuant to this Act or is otherwise duly authorised under this Act or any other Act relating to mining;

(b) employ or suffer any other person to enter or be upon land to carry on prospecting, exploration or mining unless that other person is the holder of the relevant authority granted pursuant to this Act or is otherwise duly authorised under this Act or any other Act relating to mining;

(c) stay upon or erect any structure, including a residence, on land for purposes associated with prospecting, exploring or mining unless the person is duly authorised under this Act or any other Act relating to mining;

(d) carry on mining operations upon or remove mineral or ore from land unless the person is duly authorised under this Act or any other Act relating to mining;

(e) in a mining district or part of a mining district the subject of a regulation, use machinery or equipment for the purpose of prospecting, exploring or mining which under a regulation has been declared shall not be used for that purpose.

Note—

This provision is an executive liability provision—see section 412A.

(2) A person found on land contravening any provision of subsection (1) may, whether or not the person is prosecuted for an offence, be ejected from that land using such force as is necessary for that purpose, by an authorised officer or anyone else helping the authorised officer.

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403 Offences regarding land subject to mining claim or mining lease

(1) A person shall not—

(a) enter or be upon land; or

(b) use or occupy land; or

(c) erect any building or structure on or make any other improvement to land;

that is the subject of a mining claim or the surface area of a mining lease unless—

(d) the person is authorised by or under this Act, any other Act relating to mining, the GHG storage Act or the Geothermal Act in that regard; or

(e) the person is the owner of the land or is authorised in that behalf by the owner and, in either case, the person has the consent of the holder of the mining claim or, as the case may be, mining lease.

Note—

This provision is an executive liability provision—see section 412A.

(2) Subsection (1)(a) shall not operate to prevent a police officer or an inspector or other person appointed or authorised under any Act or law to enter land for the purpose of carrying out duties from so entering and carrying out those duties.

404 Offence to resist bailiff etc.

A person shall not—

(a) assault, resist, obstruct or attempt to obstruct an authorised officer or bailiff engaged in executing a duty or exercising powers for the purposes of this Act or of any other Act relating to mining;

(b) forcibly or clandestinely retake or attempt to retake possession of land from which the person has been removed pursuant to this Act or of any part of that land;

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(c) resist or wilfully obstruct any person in the exercise of rights under a determination of the Land Court or engaged in putting such a determination into effect;

(d) assault any person in whose favour a determination of the Land Court has been made on account of that determination.

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 412B, to have also committed the offence.

404A Distance of excavation from railway works

(1) This section applies if railway works for a railway are in, on or near the area of a mining claim or mining lease.

(2) The holder of the mining claim or mining lease must not excavate land near the railway works if the excavation is likely to adversely affect the railway works.

Maximum penalty—200 penalty units.

(3) However, subsection (2) does not apply if the holder—

(a) has written consent from the owner of the rail corridor land where the railway works are situated; and

(b) has lodged the consent with the chief executive.

(4) In this section—

railway works, for a railway, means works erected or placed for the railway, and includes, for example, a bridge, culvert, cutting, drain, embankment or pier.

404B Interference with particular things

(1) A person must not, unless the person has a reasonable excuse, interfere with any of the following—

(a) a post, cairn of stones or other thing (a ***boundary marker***), used for marking out the boundary of the part

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of the area to which an application for a mining claim or mining lease relates;

(b) a number (a ***marked number***) marked or engraved on a post or cairn of stones used for marking out the boundary of the part of the area to which an application for a mining claim or mining lease relates;

(c) a survey mark placed on the part of the area to which an application for a mining claim, mineral development licence or mining lease relates.

Maximum penalty—200 penalty units.

(2) For subsection (1), it is a reasonable excuse for a person to interfere with a boundary marker or marked number if the marker or number is no longer required under this Act.

(3) In this section—

interfere with, a boundary marker, marked number or survey mark, includes damage, destroy or remove the marker, certificate, number or mark.

404C Information requirements for holders of mining tenements

(1) The chief executive or an authorised officer may, by notice—

(a) require the holder of a mining tenement to provide information about the tenement, activities carried out under the tenement or production or sales information relating to the tenement; or

(b) require a person who carries out an activity under section 386V to provide information about the activities carried out by the person under that section.

(2) The notice must state—

(a) the information that must be provided; and

(b) how the information must be provided; and

(c) the day by which the information must be provided.

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(3) Subject to section 342(11), a person given a notice under subsection (1) must comply with the notice.

Maximum penalty—200 penalty units.

(4) The chief executive may—

(a) use the information to produce statistics and other data; and

(b) publish the statistics and other data produced under paragraph (a).

(5) However, the use or publication mentioned in subsection (4) must not relate to information that is—

(a) exempt information under the *Right to Information Act 2009*; or

(b) information disclosure of which could reasonably be expected to cause a public interest harm as mentioned in the *Right to Information Act 2009*, schedule 4, part 4.

404D False or misleading document

(1) A person must not give the chief executive or an authorised officer (the ***recipient***) a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

Notes—

1 This provision is an executive liability provision—see section 412A.

2 If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 412B, to have also committed the offence.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

(a) tells the recipient, to the best of the person's ability, how it is false or misleading; and

(b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

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(3) In a proceeding for an offence against subsection (1), it is enough to state the document was 'false or misleading' to the person's knowledge, without specifying which.

404E Interference with road

(1) A person must not perform a mining activity in a way that obstructs a road, unless the mining activity is expressly authorised under a mining tenement.

Maximum penalty—200 penalty units.

(2) A person must not, in performing a mining activity, undermine a road in a way that endangers any person using, or likely to use, the road.

Maximum penalty—200 penalty units.

(3) In this section—

mining activity means an activity for the purpose of mining and includes, for example—

(a) depositing earth or material; and

(b) disturbing the surface of the ground; and

(c) erecting works; and

(d) sinking a shaft.

405 Directions to be complied with

(1) A person must comply with a direction given to, or a requirement made of, the person by an authorised officer under this Act, unless the person has a reasonable excuse.

Maximum penalty—1,500 penalty units.

(2) This section does not apply if the direction is a compliance direction.

Note—

For compliance directions, see section 335C.

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406 Land Court may review direction or requirement

(1) A person dissatisfied with the following may, if no other right of appeal against the direction or requirement is given under this Act, apply in writing to the Land Court for a review of the direction or requirement—

(a) a direction or requirement given or made by an authorised officer;

(b) a road use direction, relating to an authority under this Act, given to the person by a public road authority under the Common Provisions Act, section 64;

(c) a condition imposed by a public land authority on a resource authority holder entering public land under the Common Provisions Act, section 59;

(d) the variation of a condition mentioned in paragraph (c).

(2) The application must—

(a) set out the grounds for review; and

(b) be filed.

(4) The Land Court must review the direction or requirement and may make any inquiry the Land Court considers appropriate to help the Land Court reach a decision.

(5) The Land Court may—

(a) confirm the direction or requirement; or

(b) amend the direction or requirement; or

(c) revoke the direction or requirement.

(6) If the Land Court amends the direction or requirement, the Land Court's decision is taken to be the direction or requirement of the authorised officer.

(7) The Land Court must notify the decision to—

(a) the person dissatisfied; and

(b) the authorised officer who gave or made the direction or requirement.

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407 Minister may require survey

(1) Upon the request in writing of the Minister given at any time, the applicant for the grant of or holder of a mining claim, exploration permit, mineral development licence or mining lease shall have the area of the permit, licence or lease, or any part of the area, specified by the Minister surveyed or further surveyed as indicated in the request.

(2) The area, or the part of the area, must be surveyed by a cadastral surveyor.

(3) Liability at law shall not attach to the Crown, the Minister or any officer of the department of the Government for the time being administering this Act for any error or inaccuracy in a survey or plan of survey carried out by a cadastral surveyor for the purpose of this section or for anything done or omitted to be done on the assumption that the survey or plan was accurate.

(4) The applicant or holder to whom a request is made under subsection (1) shall incur and be liable to pay all costs associated with the work carried out by a cadastral surveyor under this section.

408 Surveyor not to have interest

(1) A cadastral surveyor who holds or is entitled (directly or indirectly) to the benefits of any share or interest in a mining claim, exploration permit, mineral development licence or mining lease or in an application for the grant of any of them shall not carry out a survey of the area of the permit, licence or lease, or any part of the area, for the purposes of this Act.

(2) A cadastral surveyor who has an entitlement or expectation of entitlement to share in profits of a public company which company is entitled to the benefits (directly or indirectly) of any share or interest referred to in subsection (1) does not have a share or interest referred to in subsection (1).

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409 Removal orders

(1) Where a person is alleged to be in occupation of or upon any land, or to have erected or possess or control any building or structure or to have made any other improvement to land that is the subject of a mining claim or the surface area of a mining lease, without any authority that the person is required to have by this Act or any other Act relating to mining or in contravention of this or that Act, upon the application of—

(a) an authorised officer; or

(b) a police officer; or

(c) a person who claims to be entitled to occupy that land; or

(d) a holder of any authority granted under this Act or any other Act relating to mining in respect of that land (other than a prospecting permit, exploration permit or mineral development licence);

that person may be summonsed to appear before the Land Court at a time and place therein named to show cause why the person should not be removed from that land or ordered to remove any building, structure or other improvement.

(2) If a person summonsed pursuant to subsection (1) fails to appear at the time and place specified or having appeared fails to show sufficient cause to the satisfaction of the Land Court, the Land Court may order—

(a) the removal of the person summonsed from the land in question;

(b) the removal, disposal or destruction of any building, structures or other improvements erected on or made to the land in contravention of this Act or any other Act relating to mining;

(c) the removal, seizure or disposal of any machinery or equipment upon the land that is or is capable of being used in contravention of this Act or of any other Act relating to mining and is not lawfully upon that land.

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(3) An order made pursuant to subsection (2) may direct the person summonsed to appear to—

(a) remove himself or herself from the land in question; or

(b) remove, dispose of or destroy buildings, structures or other improvements; or

(c) remove machinery or equipment;

forthwith or within a time specified in the order and may further direct that if action referred to in paragraph (b) or (c) specified to be taken in the order is not taken in the time specified, an authorised officer and all persons acting under the authorised officer's direction, using such force as is necessary, may enter upon the land and do all things necessary to seize and dispose of buildings, structures, improvements, machinery and equipment specified in the order.

(4) Anything seized by an authorised officer pursuant to subsection (3) shall be forfeited to and becomes the property of the Crown and shall be disposed of in such manner as the Minister determines.

(5) At the time of making an order pursuant to subsection (2) or at any later time, the Land Court may issue a warrant addressed to the person who commenced proceedings and to all police officers requiring the appropriate action to be taken and the warrant shall be sufficient authority for that person or any police officer to execute the warrant according to its tenor using such force as is necessary for the purpose.

(6) The costs reasonably incurred by an authorised officer in taking any action under this section shall be a debt due and owing to the Crown by the person who failed to take the action ordered by the Land Court and may be recovered in the Land Court.

(7) In an action under subsection (6) for the recovery of a debt due to the Crown, the production to the Land Court of a certificate by the chief executive certifying the amount of that debt shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the debt and the amount thereof.

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410 Certain interests not interests for certain purposes

For the purposes of this Act a person who holds or becomes entitled (directly or indirectly) to the benefits of any interest in a mining claim, exploration permit, mineral development licence or mining lease by virtue of—

(a) the person being a beneficiary in a deceased estate; or

(b) the person entitlement to share in profits of a public company;

does not hold an interest in the mining claim, exploration permit, mineral development licence or mining lease.

411 Indemnity against liability

(1) Neither the Crown, an authorised officer, police officer nor any other person who acts or purports to act under the authority of section 342(10), 343 or 344A(1) shall be liable to pay damages or compensation for loss or injury suffered on account of anything done or omitted by any person acting pursuant to any provision of section 342(10), 343 or 344A(1) or purporting to act bona fide and without negligence for the purposes of that provision.

(2) An authorised officer, police officer or any other person who acts or purports to act under the authority of section 342(10) or 343 shall not be criminally liable on account of anything done pursuant to any provision of section 342(10) or 343 or purportedly pursuant to any such provision bona fide and without negligence for the purposes of that provision.

412 Offences and recovery of penalties etc.

(1) A person who contravenes or fails to comply with any provision of this Act commits an offence against this Act and, save where a specified penalty is otherwise prescribed, is liable to a penalty of 200 penalty units or to imprisonment for 12 months.

(2) A proceeding for an offence against this Act may be instituted in a summary way under the *Justices Act 1886*.

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(3) All moneys payable under this Act, other than by way of a penalty (whether for an offence, or for a breach of the conditions of a mining tenement or other authority under this Act, or otherwise) and not recovered by way of utilisation of any security deposit may be recovered as a debt.

412A Liability of executive officer—particular offences committed by company

(1) An executive officer of a company commits an offence if—

(a) the company commits an offence against an executive liability provision; and

(b) the officer did not take all reasonable steps to ensure the company did not engage in the conduct constituting the offence.

Maximum penalty—the penalty for a contravention of the executive liability provision by an individual.

(2) In deciding whether things done or omitted to be done by the executive officer constitute reasonable steps for subsection (1)(b), a court must have regard to—

(a) whether the officer knew, or ought reasonably to have known, of the company's conduct constituting the offence against the executive liability provision; and

(b) whether the officer was in a position to influence the company's conduct in relation to the offence against the executive liability provision; and

(c) any other relevant matter.

(3) The executive officer may be proceeded against for, and convicted of, an offence against subsection (1) whether or not the company has been proceeded against for, or convicted of, the offence against the executive liability provision.

(4) This section does not affect any of the following—

(a) the liability of the company for the offence against the executive liability provision;

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(b) the liability, under section 412B, of the executive officer for the offence against section 404D(1);

(c) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the company, for the offence against the executive liability provision.

(5) In this section—

executive liability provision means any of the following provisions—

- section 326D(1)
- section 333B(1)
- section 333C(1)
- section 333D(1)
- section 334C(1)
- section 402(1)
- section 403(1)
- section 404D(1).

executive officer, of a company, means a person who is concerned with, or takes part in, the management of the company, whether or not the person is a director or the person's position is given the name of executive officer.

412B Executive officer may be taken to have committed offence

(1) If a company commits an offence against a deemed executive liability provision, each executive officer of the company is taken to have also committed the offence if—

(a) the officer authorised or permitted the company's conduct constituting the offence; or

(b) the officer was, directly or indirectly, knowingly concerned in the company's conduct.

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(2) The executive officer may be proceeded against for, and convicted of, the offence against the deemed executive liability provision whether or not the company has been proceeded against for, or convicted of, the offence.

(3) This section does not affect either of the following—

(a) the liability of the company for the offence against the deemed executive liability provision;

(b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the company, for the offence against the deemed executive liability provision.

(4) However, this section does not apply to the company's offence to the extent it involves a contravention relating to a royalty prescribed in respect of a mineral.

Example for subsection (4)—

a royalty return lodged by the company containing information that is known to be false or misleading in a material particular

(5) In this section—

deemed executive liability provision means—

(a) any of the following provisions of this Act—

- section 20(5)
- section 335C(1)
- section 404
- section 404D(1); or

(b) either of the following provisions of the Common Provisions Act—

- section 39(1)
- section 43(1).

413 Evidentiary provision

(1) This section applies to a proceeding under this Act.

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(2) The appointment or power of the chief executive or an authorised officer must be presumed unless a party, by reasonable notice, requires proof of—

(a) the appointment; or

(b) the power to do anything under this Act.

(3) A signature purporting to be the signature of the chief executive or an authorised officer is evidence of the signature it purports to be.

(4) A certificate purporting to be signed by a person mentioned in subsection (3), and stating any of the following matters is evidence of the matter—

(a) a stated document is—

(i) an order, direction, requirement or decision, or a copy of an order, direction, requirement or decision, given or made under this Act; or

(ii) a notice, or a copy of a notice, given under this Act; or

(iii) a record, or a copy of a record, kept under this Act;

(b) on a stated day, or during a stated period, a stated person was or was not the holder of an authority or a stated authority;

(c) a stated authority was or was not in force on a stated day or during a stated period;

(d) on a stated day, a stated authority terminated or was surrendered;

(e) on a stated day, a stated person was given a stated notice, order, requirement or direction under this Act;

(f) a stated fee or other amount is payable by a stated person to the State and has not been paid;

(g) anything else prescribed under a regulation.

(5) A certificate purporting to be signed by the chief executive of the department within which the *Land Act 1994* is administered, stating things about stated land that are material

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to classifying the land as being or not being occupied land, is evidence of the things stated.

(6) In this section—

authority means—

(a) a prospecting permit; or

(b) a mining claim; or

(c) an exploration permit; or

(d) a mineral development licence; or

(e) a mining lease.

414 Failure to supply information constitutes noncompliance with Act

Where a provision of this Act relating to an application that may be made under this Act provides for a request that may be made to the applicant to supply any further information, the failure to supply the information within the time provided therefor shall be deemed to be a failure to comply with the requirements of this Act that apply in respect of the application.

415 Copies of decisions to be sent to chief executive

Upon the making of any decision or other order by any court or tribunal exercising jurisdiction in Queensland upon any matter relating to prospecting, exploring or mining or to this Act or any other Act relating to mining, the registrar or other proper officer of the court or tribunal performing the duties of a registrar shall forthwith forward a copy of that decision or order to the chief executive.

416 Rights independent of this Act preserved

Save in relation to compensation expressed to be payable by sections 85, 86, 125, 281, 282, 317 and 334ZM, the provisions of this Act shall not be construed to abrogate or

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prejudice any right had by any person independently of this Act to recover damages or obtain any other remedy in respect of damage or injury suffered or loss incurred by the person by reason of prospecting, exploring or mining.

416A Approval of forms

(1) The chief executive may approve forms for use under this Act.

(2) A form may be approved for use under this Act that is combined with, or is to be used together with, an approved form under another Act.

417 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made about the following matters—

(a) the fees to be paid under this Act;

(b) the amounts or rates or methods of calculation of amounts of the annual rentals payable in respect of mining claims, exploration permits, mineral development licences and mining leases which in respect of each such type of grant may vary according to the respective areas or upon such other criteria as are specified in the regulations;

(c) the identification (by pegging, surveying or otherwise) of the area of any mining claim, exploration permit, mineral development licence or mining lease, granted or any application therefor under this Act;

(d) the conditions which shall and conditions which may be imposed in respect of any mining tenement or other authority under this Act;

(e) the making and content of statements under section 245(1)(o)(iii);

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(f) matters the chief executive must consider in deciding whether or not to accept a statement under section 245(1)(o)(iii);

(g) the location of mine workings at minimum distances from public or private roads or railways;

(h) the disposal of coal seam gas;

(i) drilling, completing and abandoning drill holes, and hazard reporting;

(j) the protection from injury or unlawful removal of any improvements, machinery, plant or equipment situated on any land in the area of a mining claim, mineral development licence or mining lease and of any races, drains, dams, reservoirs, stored water, pegs, posts, fences, notices or other things used in connection with mining;

(ja) the protection from obstruction of races, drains, dams, reservoirs, channels and watercourses used in connection with mining;

(k) the powers and duties of authorised officers and all other persons whatsoever in the discharge of their functions for the purposes of this Act;

(l) the amount or rates or methods of calculation of royalty to be paid under this Act and the time and manner of its assessment and payment, the collection and enforcement of payment;

(m) the manner of making and lodging royalty returns, documents and statements and the keeping of records and books of accounts;

(n) the furnishing of information, reports, returns, documents and statements for the purposes and by the persons specified in the regulations;

(o) the medium and format (whether by electronic or digital means or otherwise) by which information shall be supplied;

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(p) the particulars to be recorded in the register and the examination or provision of particulars from the register and the prescribing of the fees payable in respect thereof;

(q) penalties for a contravention or failure to comply with any regulation;

(r) the way an application, document or submission must be made, given, filed, forwarded or lodged for section 386O(2)(b) or (4), or the way a report must be given for section 318AAH(1)(g), including, for example—

(i) practices and procedures for lodgement of applications and other documents; and

(ii) methods for acknowledging receipt of documents; and

(iii) methods for acceptance of the lodgement of documents; and

(iv) the time at which a document is taken to have been lodged, but only to the extent that this Act does not provide otherwise;

(s) requiring lodgement of a hard copy of the application, document or submission.

(3) A regulation may constitute a contravention or failure to comply with a regulation or an order of a court a continuing offence and impose a penalty that it is to be calculated by reference to the length of time the offence continues notwithstanding that the total penalty so calculated would exceed the maximum pecuniary penalty prescribed by section 412.

(4) In this section—

report includes, for prescribing the way a report must be given for section 318AAH(1)(g), another document mentioned in that section.

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Chapter 15 Transitional, declaratory and validating provisions

Part 1 General transitional provision

723AA References to repealed Acts

A reference in an Act or document to the following Acts is taken to be a reference to this Act—

- Mining Act 1898 62 Vic No. 24
- Mining Act 1968 No. 51.

Part 2 Transitional provisions before Mines Legislation (Streamlining) Amendment Act 2012

Note—

This Act, including this chapter, was amended by the *Mines Legislation (Streamlining) Amendment Act 2012*, chapter 4 to convert parts into chapters, divisions into parts and subdivisions into divisions and to relocate and renumber particular provisions. Cross-references to provisions of this Act appearing in this part have not been updated and remain as they were immediately before the conversion, relocation and renumbering.

Division 1 Transitional provisions for Act No. 27 of 1998

723 At Risk agreement conditions

(1) This section applies to the following—

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(a) a mining lease granted under the repealed Mining Act 1968, No. 51;

(b) a mineral development licence or mining lease granted before the commencement of the *Mineral Resources Amendment Act 1998*.

(2) To remove doubt, a condition contained in the licence or lease requiring the holder to comply with the At Risk agreement is and always was a valid condition.

724 Application of Mineral Resources Amendment Act 1998

(1) This section applies to the following if they were subject to a condition requiring the holder to comply with the At Risk agreement—

(a) a mining lease granted under the repealed *Mining Act 1968*;

(b) a mineral development licence or mining lease granted before the commencement of the *Mineral Resources Amendment Act 1998*.

(2) To remove doubt, sections 194A and 278A, inserted by the *Mineral Resources Amendment Act 1998*, apply to the lease or licence.

Division 2 Transitional provisions for Act No. 38 of 1998

725 Application of div 2

(1) This division applies to an application if—

(a) it is an application for—

(i) the granting of a mining tenement; or

(ii) an approval relating to a mining lease; and

(b) the application was lodged before the native title provisions start day for the application; and

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(c) the application is still current; and

(d) immediately before the native title provisions start day for the application—

(i) if paragraph (a)(i) applies—the granting of the mining tenement would have been an act to which the right to negotiate provisions applied; or

(ii) if paragraph (a)(ii) applies—the approval would have been an act to which the right to negotiate provisions applied.

(2) However, this division does not apply to an application relating to a mining tenement if a notice under section 29 of the Commonwealth Native Title Act in relation to the act the subject of the application, required to be given as part of complying with the right to negotiate provisions, was given before the native title provisions start day for the application.

(3) The Minister may by gazette notice notify, in relation to an application, a native title provisions start day.

(4) The Minister, in notifying the native title provisions start day—

(a) must have regard to when the native title provisions relevant to the application start to have application; and

(b) accordingly, is not stopped from notifying as the native title provisions start day a day that is earlier than the day the gazette notice is published.

726 Definitions for div 2

In this division—

approval has the meaning given in section 696.

native title provisions start day, for an application, means the native title provisions start day notified in relation to the application under section 725(3) and (4).

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notification commencement day, for an application, means the notification commencement day advised for the application under section 727.

727 Giving advice of notification commencement day

(1) The mining registrar must give a notice to—

(a) the applicant under each application for the granting of a mining claim or mining lease, advising the applicant of the notification commencement day for the application; and

(b) the applicant under each application for an approval relating to a mining lease, advising the applicant of the notification commencement day for the application.

(2) The chief executive must give a notice to the applicant under each application for the granting of an exploration permit or mineral development licence, advising the applicant of the notification commencement day for the application.

728 Existing prospecting permit applications

(1) This section applies to an application if—

(a) the application is for the granting of a prospecting permit; and

(b) the granting of the prospecting permit is an act to which part 13 applies.

(2) Subsection (3) applies to the giving of the application notice under section 431, instead of section 431(2).

(3) The notice must be given no later than—

(a) 2 months after the native title provisions start day for the application; or

(b) if, under section 432, the mining registrar has given a direction for the giving of a new written notice—the end of the period nominated in the direction.

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729 Existing mining claim applications

(1) This section applies to an application for the granting of a mining claim.

(7) If part 17, division 4 is to be applied to the granting of the mining claim, subsection (8) applies to the giving and publication of notice under section 652, instead of section 652(3).

(8) The written notice must be given under section 652(1), and the public notice must be published under section 652(2), no earlier than the notification commencement day for the application, and no later than—

(a) 4 months after the notification commencement day for the application; or

(b) if, under section 654, the mining registrar has given a direction for the giving of a new written notice and the publication of a new public notice—the end of the period nominated in the direction.

730 Existing exploration permit applications

(1) This section applies to an application for the granting of an exploration permit.

(2) The chief executive must ask the applicant to nominate which of the following the applicant now seeks to be granted—

(a) a low impact exploration permit under part 15;

(c) a high impact exploration permit under part 15, for the granting of which part 15, division 4 applies.

(3) If the applicant nominates a low impact exploration permit, subsection (4) applies to the giving of the application notice under section 486, instead of 486(2).

(4) The notice must be given no earlier than the notification commencement day for the application, and no later than—

(a) 2 months after the notification commencement day for the application; or

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(b) if, under section 487, the mining registrar has given a direction for the giving of a new written notice—the end of the period nominated in the direction.

(7) If the applicant nominates a high impact exploration permit, and part 17, division 4 is to be applied to the granting of the permit, subsection (8) applies, instead of section 524(2).

(8) For applying section 652, the written notice must be given under section 652(1), and the public notice must be published under section 652(2), no earlier than the notification commencement day, and the following period is substituted for the periods mentioned in section 652(3)(b)(i), that is, the period of 4 months after the notification commencement day.

731 Existing mineral development licence applications

(1) This section applies to an application for the granting of a mineral development licence.

(2) The chief executive must ask the applicant to nominate which of the following the applicant now seeks to be granted—

(a) a low impact mineral development licence under part 16;

(c) a high impact mineral development licence under part 16 for the granting of which part 16, division 4 applies.

(3) If the applicant nominates a low impact mineral development licence, subsection (4) applies to the giving of the application notice under section 542, instead of 542(2).

(4) The notice must be given no earlier than the notification commencement day for the application, and no later than—

(a) 2 months after the notification commencement day for the application; or

(b) if, under section 543, the mining registrar has given a direction for the giving of a new written notice—the end of the period nominated in the direction.

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(7) If the applicant nominates a high impact mineral development licence, and part 17, division 4 is to be applied to the granting of the licence, subsection (8) applies, instead of section 581(2).

(8) For applying section 652, the written notice must be given under section 652(1), and the public notice must be published under section 652(2), no earlier than the notification commencement day, and the following period is substituted for the periods mentioned in section 652(3)(b)(i), that is, the period of 4 months after the notification commencement day.

732 Existing mining lease applications

(1) This section applies to an application for the granting of a mining lease.

(7) If part 17, division 4 is to be applied to the granting of the mining lease, subsection (8) applies to the giving and publication of notice under section 652, instead of section 652(3).

(8) The written notice must be given under section 652(1), and the public notice must be published under section 652(2), no earlier than the notification commencement day for the application, and no later than—

(a) 4 months after the notification commencement day for the application; or

(d) if, under section 654, the mining registrar has given a direction for the giving of a new written notice and the publication of a new public notice—the end of the period nominated in the direction.

733 Existing applications for certain approvals

(1) This section applies to an application for an approval relating to a mining lease.

(4) If part 17, division 4 is to be applied to the approval, subsection (5) applies to the giving and publication of notice under section 652 instead of section 652(3).

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(5) The written notice must be given under section 652(1), and the public notice must be published under section 652(2), no earlier than the notification commencement day for the application, and no later than—

(a) 4 months after the notification commencement day for the application; or

(b) if, under section 654, the mining registrar has given a direction for the giving of a new written notice and the publication of a new public notice—the end of the period nominated in the direction.

734 Separate hearings

(1) This section applies if, for an application for the granting of a mining claim or mining lease—

(a) the provisions of this Act, other than the native title provisions, have been complied with, wholly or partly; and

(b) part 17, division 4 is to be applied to the granting; and

(c) a hearing (the ***earlier hearing***) has already been held under part 4 or 7 for the granting of the mining claim or mining lease.

(2) The tribunal is not required, at a hearing under part 17, division 4, to consider any issue dealt with at the earlier hearing.

(4) If a hearing is required under part 17, division 4, sections 671 and 672 do not apply, but—

(a) the mining registrar must, within 10 business days after the pre-referral period ends, fix a day for the hearing; and

(b) all consultation and negotiation parties have the right to be heard at the hearing; and

(c) the tribunal must hear the application and make a native title issues decision.

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Division 3 Transitional provisions for Environmental Protection and Other Legislation Amendment Act 2000

735 Existing Act continues to apply for special agreement Acts until Environmental Protection Act, ch 13, pt 2, div 7 commences

(1) The existing Act continues to apply for an activity, circumstance, or matter provided for under, or to which, a special agreement Act applies as if the amending Act had not been enacted.

(2) Subject to subsections (3) and (4A), subsection (1) ceases to apply when the Environmental Protection Act, chapter 13, part 2, division 7 commences.

(3) The existing Act continues to apply for changing a condition of a transitional authority (SAA) as if the amending Act had not been enacted.

Note—

See also the Environmental Protection Act, section 616D (Changing conditions of transitional authority (SAA)).

(4) However, subsection (3)—

(a) does not apply for making or deciding an application under the Environmental Protection Act, section 616H(b) to amend the authority; and

(b) does not limit chapter 13, part 2, division 7, subdivision 6 of that Act; and

(c) stops applying if the authority is amended under chapter 13, part 2, division 7, subdivision 6 of that Act and the amended authority has taken effect under that Act.

Editor's notes—

- Environmental Protection Act, chapter 13 (Savings, transitional and related provisions), part 2 (Transitional provisions for Environmental Protection and Other Legislation Amendment Act 2000), division 7 (Provisions about special agreement Acts

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inserted under Environmental Protection and Other Legislation Amendment Act 2008), subdivision 6 (Amendment of transitional authorities (SAA) for conversion to new authorities)

- Environmental Protection Act, section 616H (Requirement to apply for new authority or amend etc. transitional authority (SAA))

(4A) Section 292(1) and (2) of the existing Act continues to apply for amending a plan of operations under the existing Act for a relevant mining lease for a transitional authority (SAA) as if the amending Act had not been enacted.

(5) In this section—

amending Act means the *Environmental Protection and Other Legislation Amendment Act 2000*.

existing Act means this Act as it was in force immediately before the amending Act, section 6 commenced.

transitional authority (SAA) see the Environmental Protection Act, section 615.

Division 4 Transitional provision for Mineral Resources and Other Legislation Amendment Act 2002

736 Exclusion of pt 7A for continuance of existing notifiable road uses

(1) Part 7A does not apply for a notifiable road use (the ***continuing use***) carried out by a mining tenement holder if—

(a) at any time within 12 months before the commencement of section 318EP, the holder carried out a notifiable road use (the ***existing use***); and

(b) the type of haulage under the continuing use is the same, or substantially the same, as the type of haulage under the existing use.

(2) Subsection (1) applies even if the continuing use stops and later starts again.

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Division 5 Transitional provisions for Natural Resources and Other Legislation Amendment Act 2003

737 No notification commencement day advised before 31 March 2003

(1) This section applies to an application if—

(a) it is an application to which division 2 applies; and

(b) the mining registrar or the chief executive is required under section 727 to give the applicant under the application a notice advising the applicant of the notification commencement day for the application; and

(c) the notice is not given on or before 31 March 2003.

(2) The mining registrar or chief executive must not give the notice.

(3) For the purpose only of deciding whether a division of part 14, 15, 16 or 17 applies in relation to the application, the application is taken to have been lodged after 31 March 2003.

738 Effect of extension of time for giving notice or information

(1) This section applies to a person if—

(a) at any time before the commencement of this section, the person was required to give a notice or information within a stated time; and

(b) immediately before the commencement, the person had not given the notice or information, whether or not the stated time had expired.

(2) The time within which the person must give the notice or information may be worked out using the stated time as amended by the amending Act.

(3) In this section—

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amending Act means the *Natural Resources and Other Legislation Amendment Act 2003*.

relevant provision means section 486(2)(a), 487(1), 524(3), 542(2)(a), 543(1) or 581(3).

stated time means the number of days stated in a relevant provision.

Division 6 Transitional provisions for Petroleum and Gas (Production and Safety) Act 2004

Subdivision 1 Preliminary

739 Definitions for div 6

In this division—

commencement, other than for subdivision 2, means the day section 318CM commences.

MDL means mineral development licence.

MDL applicant see section 754(2)(c).

MDL application see section 754(1)(b).

mineral hydrocarbon mining lease means any of the following mining leases or its replacement, or any consolidation of 2 or more of the following leases the area of which does not include land not in the area of the following mining leases—

Mining lease number	Mining lease name
ML1759	Blackwater Mine
ML1760	Blackwater
ML1761	Mackenzie River

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Mining lease number	Mining lease name
ML1762	South Blackwater
ML1763	Goonyella Coal Mine
ML1764	Riverside
ML1771	Sirius Creek
ML1773	Laleham
ML1775	—
ML1781	Daunia
ML1782	Norwich Park
ML1789	Gregory
ML1790	—
ML1791	Winchester
ML1792	Terang
ML1800	Wilpeena Mining Lease
ML1802	Riverside Extended
ML1831	German Creek
ML1860	Togara No. 2
ML1885	Harrow Creek Extended
ML1907	Marshmead
ML1923	Gregory Extension
ML4749	Poitrel
ML4750	Kemmis-Walker
ML4751	Bee Creek
ML4752	Lancewood
ML5591	Moura

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Mining lease number	Mining lease name
ML5592	Moura
ML5593	Moura
ML5596	Moura
ML5597	Moura
ML5598	Moura
ML5599	Moura No. 3
ML5600	Moura
ML5601	Moura
ML5603	Moura
ML5604	Moura
ML5606	Moura
ML5607	Moura
ML5611	Moura
ML5630	Moura
ML5643	Moura
ML5644	Moura
ML5646	Moura
ML5650	Moura
ML5656	Moura
ML5657	Theodore
ML70108	Moranbah North

mining, a substance, includes—

(a) extracting, producing, releasing or disposing of the substance; and

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(b) transporting the substance within the boundaries of the area of the mining lease under which it was mined.

overlapping land see section 754(1).

special agreement Act means any of the following—

(a) the *Central Queensland Coal Associates Agreement Act 1968*; or

(b) the *Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Acts 1962* to *1965*;

(c) an agreement, or amendment of an agreement, provided for under an Act mentioned in paragraph (a) or (b).

Subdivision 2 Provisions for special agreement Acts

740 Application of div 6 to special coal mining lease under special agreement Act

This division applies to a special coal mining lease granted under a special agreement Act as if the lease were a mineral hydrocarbon mining lease.

741 Unfinished special coal mining lease applications

(1) A special coal mining lease must not be granted under a special agreement Act if the lease was applied for or requested, but not granted, before the commencement of this section.

(2) Subject to subsection (3), an addition to the area of an existing special coal mining lease must not be made under a special agreement Act if the addition was applied for or requested, but not made, before the commencement.

(3) Subsection (2) does not apply if the addition is additional surface areas within the area of the existing special coal mining lease and the special coal mining lease was granted under the *Thiess Peabody Coal Pty. Ltd. Agreement Act 1962*.

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(4) This section applies despite any provision of the special agreement Act.

(5) In this section—

applied for includes specified under clause 18 of the agreement under the *Thiess Peabody Coal Pty. Ltd. Agreement Act 1962*.

existing special coal mining lease means a special coal mining lease that, immediately before the commencement, was in force under a special agreement Act.

742 Division 6 prevails over special agreement Acts

If a provision of this division conflicts with a provision of a special agreement Act, the provision of this division prevails to the extent of the inconsistency.

743 No compensation

(1) No amount, whether by way of compensation, reimbursement or otherwise is payable by the State to any person for or in connection with the enactment or operation of this subdivision.

(2) Subsection (1) applies despite any provision of a special agreement Act and despite any other Act or law.

Subdivision 3 Provision for section 3A

744 Application of s 3A to existing mining tenements

(1) Section 3A applies for an existing mining tenement.

(2) However, section 3A(3) and (7) do not apply for an authorised activity for an existing mining tenement until 3 months after the commencement.

(3) In this section—

commencement means the day section 3A commences.

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existing mining tenement means a mining tenement (other than a coal or oil shale mining tenement) in force immediately before the commencement.

Subdivision 4 Unfinished coal or oil shale mining lease applications for land in area of petroleum tenure

745 Application of pt 7AA

(1) This section applies if, before the commencement—

(a) a coal or oil shale mining lease application was made; and

(b) a recommendation about the application had not been made to the Governor in Council under section 271(3)(a)(i); and

(c) the land the subject of the application is in the area of a petroleum tenure.

(2) Part 7AA applies to the application.

(3) The application may be decided only if the provisions of part 7AA, to the extent they are relevant, have been complied with.

(4) However, subsections (2) and (3) are subject to sections 307 and 392.

Subdivision 5 Provisions for existing coal mining leases

746 Clarification provision for coal seam gas

(1) This section applies to a coal mining lease, other than a mineral hydrocarbon mining lease, that was in force during the period in which the *Petroleum Act 1923*, former section 150(4), was in force.

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(2) To remove any doubt, it is declared that despite the provisions of the *Petroleum Act 1923*, section 150(4), the entitlement under section 235 (as it was in force during that period) of the lease holder is taken, during the period, to have included the right to extract and produce, or mine, coal seam gas.

(3) To remove any doubt, it is declared that subsection (2) does not affect the application of part 7AA, division 8, subdivision 1 in relation to the lease.

(4) The right under subsection (2) is subject to section 748.

747 Continuation of particular rights relating to coal seam gas under mineral hydrocarbon mining leases

(1) From the commencement, a mineral hydrocarbon mining lease holder may—

(a) mine for coal seam gas in the area of the mining lease; and

(b) use the coal seam gas mined for any purpose allowed under the lease, including, for example, any of the following uses allowed under the lease—

(i) a use that, under section 318CN, may be made of incidental coal seam gas by a coal or oil shale mining lease holder;

(ii) a commercial use that may be made of coal seam gas by a petroleum lease holder.

(2) However, the mining and the carrying out of a use mentioned in subsection (1)(b) is subject to—

(a) section 318CO, as deferred under section 749; and

(b) section 318CU; and

(c) the following provisions of the Petroleum and Gas (Production and Safety) Act—

(i) chapters 6, 9, 10 and 11;

(ii) chapter 8, parts 1 and 2;

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(iii) chapters 12 to 14 to the extent they apply for the provisions mentioned in subparagraphs (i) and (ii).

(3) To remove any doubt, it is declared that—

(a) subsection (1) applies despite—

(i) section 318CN(1), (2) and (3); or

(ii) the *Petroleum Act 1923*, section 150; or

(iii) the Petroleum and Gas (Production and Safety) Act, sections 800 and 802; and

(b) the rights under

subsection (1) may be exercised—

(i) even though the holder does not hold a petroleum tenure that allows the rights to be exercised; and

(ii) independently of any right the holder has under the lease to mine coal.

748 Restriction on flaring or venting coal seam gas

Section 318CO applies for a coal mining lease in force immediately before the commencement as if a reference in section 318CO to incidental coal seam gas were a reference to coal seam gas generally.

749 Deferral of ss 318CN(2) and 318CO for particular existing coal mining lease holders

If, immediately before the commencement, the holder of a coal mining lease was commercially using incidental coal seam gas mined under the lease, sections 318CN(2) and 318CO do not apply to the holder until 12 months after the commencement.

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750 Deferral of s 318CR(1) for existing coal mining lease holders

Section 318CR(1) does not apply to the holder of a coal mining lease in force at the commencement until 6 months after the commencement.

Subdivision 6 Modified application of section 318CI for particular existing exploration tenements overlapping with petroleum lease

751 Application of sdiv 6

(1) This subdivision applies if—

(a) land is in the area of—

(i) a coal or oil shale exploration tenement; and

(ii) a petroleum lease; and

(b) the exploration tenement and the lease are in force immediately before the commencement.

(2) However—

(a) this subdivision does not apply to an MDL granted before the petroleum lease; and

(b) this subdivision does not apply, or ceases to apply, if the same person holds the exploration tenement and the lease.

752 Modified application of s 318CI until 3 months after commencement

(1) If, immediately before the commencement, an authorised activity for the exploration tenement was being carried out on the land, section 318CI does not apply for the carrying out of the activity on the land during the period that—

(a) starts on the commencement; and

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(b) ends 3 months after the commencement.

(2) However, if the carrying out of the activity during the period adversely affects the carrying out of an authorised activity for the lease, the activity may be carried out during the period only if section 318CI is complied with.

(3) Subsection (2) applies whether or not the authorised activity for the lease has already started.

753 Power to relinquish if activity restricted

(1) If, because of the restriction under section 752(2), the activity can not be carried out, the exploration tenement holder may with the Minister's approval lodge a written notice—

(a) relinquishing the part of the area of the exploration tenement to which the restriction applies; and

(b) proposing, for the Minister's approval, amendments to the exploration tenement accepted by the Minister under section 133(1)(g)(i) or 183(1)(m)(i)(B) to reflect the restriction.

(2) The notice must be lodged at—

(a) the office of the department for lodging the notice, as stated in a gazette notice by the chief executive; or

(b) if no office is gazetted under paragraph (a)—the office of the chief executive.

(3) Subsection (1) does not limit section 141C.

(4) The proposed amendments have no effect unless the Minister approves them.

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Subdivision 7 Particular provision for existing mineral development licences that overlap with a Petroleum Act lease

754 Application of sdiv 7

(1) This subdivision applies if, before the commencement, a petroleum lease under the *Petroleum Act 1923* was granted and when it was granted the area of the lease included any of the following land (***overlapping land***)—

(a) land in the area of an MDL that is a coal or oil shale exploration tenement;

(b) land the subject of an application (the ***MDL application***) for an MDL made but not decided before the commencement if the MDL applied for would, if granted, be a coal or oil shale exploration tenement under that Act.

(2) However, this subdivision does not apply, or ceases to apply, if—

(a) the same person holds the lease and the MDL; or

(b) the overlapping land ceases to be in the area of the lease or the MDL, or subject to the MDL application; or

(c) the person who made the MDL application (the ***MDL applicant***) is also the lessee; or

(d) the MDL application is rejected; or

(e) the MDL holder or the MDL applicant has agreed in writing with the lessee that this division does not apply.

755 Substituted restriction on authorised activities

(1) This section applies instead of section 318CI for the MDL or any licence granted because of the MDL application.

(2) An authorised activity for the MDL may be carried out on the overlapping land only if—

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(a) an agreement between the MDL holder and the lessee about coordinated development or access on the overlapping land provides that the activity may be carried out; or

(b) the required notice has been given and the carrying out of the activity—

(i) does not interfere with the carrying out of an authorised activity under the lease on the overlapping land; and

(ii) is consistent with the safety management plan under the Petroleum and Gas (Production and Safety) Act for any operating plant on the overlapping land, the operation of which is an authorised activity for the lease.

(3) Subsection (2)(b) applies whether or not the authorised activity for the lease has already started.

(4) In this section—

required notice means a notice from the MDL holder to the lessee, given a reasonable period before the start of the authorised activity for the MDL, that states when and where the activity is proposed to be carried out.

Subdivision 8 Development plans

756 Application of sdiv 8

(1) This subdivision applies for any coal or oil shale mining lease in force immediately before the commencement.

(2) Sections 757 to 759 also apply for any coal or oil shale mining lease granted for an application made before 31 December 2004 if the land the subject of the application was not in the area of a petroleum tenure.

(3) For applying subsection (2), the definition *relevant period* in section 758(4) is taken to be as follows—

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relevant period means 6 months after the first anniversary of the grant of the lease.

757 Deferral of obligation to comply with development plan

Sections 318DQ and 318DR do not apply for the coal or oil shale mining lease until—

(a) if its holder complies with section 758—when the Minister's decision about whether to approve the holder's proposed development plan takes effect; or

(b) if its holder does not comply with section 758—6 months after the commencement.

758 Obligation to lodge proposed development plan

(1) It is a condition of the coal or oil shale mining lease that its holder must, within the relevant period, lodge at the following office a proposed initial development plan for the lease—

(a) the office of the department for lodging proposed development plans, as stated in a gazette notice by the chief executive;

(b) if no office is gazetted under paragraph (a)—the office of the chief executive.

(2) The proposed plan must—

(a) comply with the initial development plan requirements; and

Note—

See also section 318ED.

(b) be accompanied by the fee prescribed under a regulation.

(3) Section 318DP and part 7AA, division 9, subdivision 3, apply for the proposed plan as if a reference in sections 318DZ to 318EA to a proposed mining lease were a reference to the coal or oil shale mining lease.

(4) In this section—

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relevant period means—

(a) if, at the commencement, the lease has underground coal mining operations or the holder is carrying out activities to manage or mine coal seam gas—6 months after the commencement; or

(b) otherwise—6 months after the first anniversary of the grant of the lease that happens after the commencement.

759 Application of pt 7AA, div 9, sdiv 3 for approval of proposed plan

(1) If the holder complies with section 758, part 7AA, division 9, subdivision 3 applies—

(a) as if a reference in the subdivision to a proposed mining lease were a reference to the coal or oil shale mining lease; and

(b) subject to section 760; and

(c) with other necessary changes.

(2) For section 318AH, the reference to a development plan approved under part 7AA, division 8 is taken to include a reference to a development plan approved under division 8 as applied under subsection (1).

760 Additional requirement for proposed development plan for mineral hydrocarbon mining lease

(1) If the coal or oil shale mining lease is a mineral hydrocarbon mining lease, a proposed development plan for the lease lodged under section 758 must—

(a) show that the lease holder proposes to commercialise coal seam gas; or

(b) include, or be accompanied by, evidence that satisfies the Minister that—

(i) the holder has fully investigated the opportunities to commercialise coal seam gas; and

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(ii) there is no basis to commercialise coal seam gas.

(2) In this section—

commercialise, for coal seam gas, means to carry out commercial mining of coal seam gas under the rights for the lease under section 747(1).

761 Additional condition for proposed development plan for mineral hydrocarbon mining lease

(1) This section applies if—

(a) the coal or oil shale mining lease is a mineral hydrocarbon mining lease; and

(b) the lease holder has, under section 758, lodged a proposed development plan for the lease; and

(c) the Minister is not satisfied as mentioned in section 760(1)(b).

(2) The Minister may, by written notice, require the holder to carry out further investigations and lodge a written report about the investigations within a stated reasonable period at—

(a) the office of the department for lodging the report, as stated in a gazette notice by the chief executive; or

(b) if no office is gazetted under paragraph (a)—the office of the chief executive.

(3) It is a condition of the lease that the holder must comply with the requirement.

(4) In this section—

investigations includes discussions with the holder of any petroleum authority the area of which is included in the area of the mineral hydrocarbon mining lease.

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762 Omission of particular conditions to be superseded by development plan

(1) This section applies to a coal or oil shale mining lease as follows and the condition of the lease stated opposite the lease—

Mining lease number	Condition
ML6949	condition 2.35 in the annexure to the lease
ML70108	special condition and reservation 1 in schedule 3 to the lease
ML70241	the special condition in schedule B to the lease

(2) From the first approval of a development plan for the lease after the commencement the condition is no longer a condition of the lease.

(3) The mining registrar must, as soon as practicable after the first approval, amend the instrument of the lease to omit the condition.

763 Development plan requirements for renewal applications if no current development plan

(1) This section applies for a renewal application for the coal or oil shale mining lease if the lease does not yet have a development plan.

Note—

See section 758.

(2) Subsections (3) to (5) apply instead of sections 318DI(2), 318DJ and 318DK.

(3) The application must include a proposed development plan for the renewed lease.

(4) The provisions of part 7AA, division 9, subdivision 3 apply—

(a) as if a reference in the subdivision to a proposed mining lease were a reference to the coal or oil shale mining lease; and

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(b) subject to section 760; and

(c) with other necessary changes.

(5) For section 318AH, the reference to a development plan approved under part 7AA, division 8 is taken to include a reference to a development plan approved under division 8 as applied under subsection (4).

Division 7 Transitional provisions for Mineral Resources and Other Legislation Amendment Act 2005

764 Application of particular provisions

(1) Each of sections 81, 138(2) to (4), 139, 141, 194 and 276, as amended, applies to the mining tenement mentioned in the section whether the tenement is granted before or after the commencement of the amendment.

(2) Each of sections 85 and 93(3)(c), as amended, applies to an application for renewal of a mining claim made, but not decided, before the commencement of the amendment.

(3) Each of sections 85A and 279A applies if—

(a) the circumstances mentioned in subsection (1)(a) of the section arise before the commencement of the section; and

(b) the 3-month period mentioned in subsection (1)(b) of the section ends after the commencement.

(4) Section 137(3)(h) applies to an exploration permit applied for before, but granted after, the commencement of the provision.

(5) Each of sections 133, 147, 197 and 286 as in force immediately before the section's amendment continues to apply, despite the amendment, in relation to applications made, but not decided, before the amendment.

(6) Section 144, as amended, applies in relation to a determination made by the Minister under section 144(1) after

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the commencement of the amendment, even if the application for the grant or renewal mentioned in the section was made before the commencement.

(7) Section 269, as amended, applies in relation to an application for the grant of a mining lease made before the commencement of the amendment if the tribunal's recommendation is made after the commencement.

(8) In this section—

amended means amended or repealed by the amending Act.

amending Act means the *Mineral Resources and Other Legislation Amendment Act 2005*.

764A Application of public interest provisions to undecided applications

(1) To remove any doubt, it is declared that to the extent they are relevant the public interest provisions apply to any undecided application for the renewal of a mining tenement.

(2) In this section—

public interest provisions means sections 147A(1)(d), 197A(1)(e) and 286A(1)(g).

undecided application means an application lodged but not decided before the public interest provisions commenced.

Division 8 Transitional provisions for Land Court and Other Legislation Amendment Act 2007

765 Particular references to Land Court to be taken to be references to tribunal

(1) A reference in this Act to the Land Court is taken to be a reference to the tribunal for—

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(a) any application under this Act, including any proceeding relating to the application, to which any provision of the native title provisions applies; and

(b) any other matter that is the subject of the native title provisions if, in the opinion of the Land Court or the tribunal, it is necessary or convenient that the reference be taken to be a reference to the tribunal.

(2) If, for a particular matter, subsection (1) would require a reference, in a relevant section, to the Land Court to be taken to be a reference to the tribunal, any reference in the section to the Land Appeal Court is taken to be a reference to the tribunal (appeal) as defined in the section immediately before the commencement of this section.

(3) In this section—

relevant section means section 86 or section 282.

766 Reference to tribunal in s 764 (Application of particular provisions)

The reference in section 764(7) to the tribunal may, for a recommendation mentioned in that provision that is made by the Land Court after the commencement of this section, be taken to be a reference to the Land Court.

Division 9 Transitional provision for Mining and Other Legislation Amendment Act 2007

766A Provision for amendment of s 133

(1) This section applies for an exploration permit application if—

(a) it was lodged on or before 31 March 2003; and

(b) it had not been decided before the commencement of this section; and

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(c) any of the native title provisions apply for the deciding of the application.

(2) Section 133 applies for the deciding of the application as if the amendment of that section under the *Mining and Other Legislation Amendment Act 2007* had not been enacted.

Division 10 Transitional provisions for Clean Energy Act 2008

767 Continuation of regulation under s 391

(1) This section applies to the *Mineral Resources Regulation 2003*, part 8 and schedule 3 (the ***restricted area arrangements***), as in force immediately before the commencement of this section.

(2) The restricted area arrangements continue to have effect as if the amendment of section 391 under the *Clean Energy Act 2008* had not commenced.

(3) Any provision included in the restricted area arrangements may be repealed by a regulation under this Act but a provision may not be amended.

767A Application of s 208(3A) to existing applications

To remove any doubt, it is declared that section 208(3A) applies to an application lodged under section 208 but not decided before section 208(3A) commenced.

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Division 11 Transitional provision for Mines and Energy Legislation Amendment Act 2008

Subdivision 1 Provisions for amendments to due dates and reminder dates

768 Application of div 11

This division applies to a mining tenement granted before 1 January 2009 if it is a mining claim, mineral development licence or mining lease.

769 Transitional provision for rental

(1) Subject to subsections (2) and (3), the unamended rental provision continues to apply to the mining tenement up to 31 August 2009.

(2) The amended rental provision applies to the mining tenement for any rental year starting on or after 1 September 2009.

(3) However, for applying subsections (4) and (5)(b) of the unamended rental provision, the period from 1 January 2009 to 31 August 2009 (the ***nominal year***) is taken to be a whole rental year.

(4) The amount of the rental prescribed for the nominal year is taken to be two-thirds of the amount of the rental prescribed for 2009.

(5) In this section—

amended rental provision means the following as in force on the date of assent of the amending Act—

(a) if the mining tenement is a mining claim—section 95;

(b) if the mining tenement is a mineral development licence—section 193;

(c) if the mining tenement is a mining lease—section 290.

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amending Act means the *Mines and Energy Legislation Amendment Act 2008*.

unamended rental provision means the following as in force before the date of assent of the amending Act—

(a) if the mining tenement is a mining claim—section 95;

(b) if the mining tenement is a mineral development licence—section 193;

(c) if the mining tenement is a mining lease—section 290.

770 Transitional provision for contravention provisions

(1) For applying section 95(5)(a), 193(5)(a) or 290(5)(a) to the mining tenement before 2 April 2009, the reference in that provision to 30 September is taken to be a reference to 31 January.

(2) For applying section 106(2)(a), 209(2)(a) or 308(2)(a) to the mining tenement before 2 April 2009, the reference in that provision to 1 December is taken to be a reference to 1 April.

Subdivision 2 Provision for special agreement Acts

771 Payment of rent for special agreement Act leases

(1) From the commencement of this section—

(a) the designated rental provision applies for the payment of rent under any special agreement Act lease; and

(b) a provision of any of the following ceases to apply to the extent the provision conflicts with the designated rental provision—

(i) a special agreement Act;

(ii) an agreement mentioned in a special agreement Act;

(iii) a special agreement Act lease.

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(2) The application of the designated rental provision is subject to subdivision 1.

(3) To remove any doubt, it is declared that the designated rental provision applies as mentioned in subsection (1)(a) despite the relevant special agreement Act and the repealed transitional schedule.

(4) This section does not affect or otherwise limit the application of section 290A to a special agreement Act lease.

(5) In this section—

designated rental provision, for a special agreement Act lease, means—

(a) if the lease has been renewed since 1 September 1990—section 290; or

(b) if the lease has not been renewed since 1 September 1990—modified section 290.

modified section 290 means section 290 changed so that the references in section 290(4) and (5)(b) to the prescribed amount for a rental year are, for a special agreement Act lease, references to the rental payable for the period that corresponds to that year under the relevant—

(a) special agreement Act; or

(b) agreement mentioned in a special agreement Act; or

(c) special agreement Act lease.

repealed transitional schedule means the former schedule to this Act that was repealed by the *Offshore Minerals Act 1998*.

special agreement Act means an Act mentioned in the table to section 3(1) of the repealed transitional schedule.

special agreement Act lease means a lease mentioned in section 3(1)(b) of the repealed transitional schedule.

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Subdivision 3 Miscellaneous provision

772 Existing applications

(1) To remove any doubt, it is declared that to the extent they are relevant the amendments to this Act under the amending Act apply to any undecided application for or relating to a mining tenement.

(2) In this section—

amending Act means the *Mines and Energy Legislation Amendment Act 2008*.

undecided application means an application lodged but not decided before the date of assent of the amending Act.

Division 12 Transitional provision for Mines and Energy Legislation Amendment Act 2010

773 Existing mining lease applications

(1) This section applies to an application for the grant of a mining lease lodged before the commencement but not heard by the Land Court before the commencement.

(2) If a properly made objection was lodged before the commencement—

(a) previous section 265 applies to the application; and

(b) this Act as in force immediately before the commencement continues to apply to the Land Court for dealing with, or continuing to deal with, the application.

(3) If a properly made objection was not lodged before the commencement—

(a) amended section 265 applies to the application; and

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(b) any reference under previous section 265 of the application to the Land Court for hearing is of no effect and is taken never to have had any effect; and

(c) this Act as in force from the commencement applies to the application.

(4) In this section—

amended section 265 means section 265 as in force immediately after the commencement.

commencement means the date of assent of the *Mines and Energy Legislation Amendment Act 2010*.

previous section 265 means section 265 as in force before the commencement.

properly made objection means an objection to the application lodged in accordance with section 260.

Division 13 Transitional provisions for amendments under Geothermal Energy Act 2010

Subdivision 1 Provision for amendments commencing on date of assent

774 Reference to particular leases

(1) A reference in an Act, lease, contract or other document to a CQCAA lease is, if the context permits, taken to include a reference to a CQCAA lease that is renewed under this Act or any other Act relating to mining.

(2) In this section—

CQCAA lease means a special coal mining lease granted under the *Central Queensland Coal Associates Agreement Act 1968*.

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775 Application of amended s 249

(1) This section applies if, immediately before the commencement, section 249 applied in relation to an application mentioned in section 249(1).

(2) Section 249 as in force immediately after the commencement applies in relation to the application.

(3) For the purpose of subsection (2), the request period under section 249 is the period of 10 business days starting on the commencement.

(4) In this section—

commencement means the commencement of this section.

Subdivision 2 Provisions for amendments about compensation and the land access code

776 Old access code ceases to apply

(1) This section applies if a condition of a mining tenement requires the holder to comply with the old access code.

(2) On the commencement of this section the condition ceases to be a condition of the mining tenement.

(3) In this section—

old access code means the document called 'Code of Conduct-Procedures for Sound Landowner/Explorer Relations' approved by the Minister on 20 September 1990.

777 Land access code prevails over conditions

If a condition of a mining tenement is inconsistent with a mandatory provision of the land access code, the mandatory provision prevails to the extent of the inconsistency.

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778 Existing compensation decisions and proceedings continue

(1) If, before the commencement of this section, the Land Court had decided compensation under former section 145 or 191 for a matter, the decision is taken to be the compensation for the matter decided under schedule 1, section 22.

(2) If, immediately before the commencement, a proceeding under former section 145 or 191 had been started—

(a) the proceeding may be finished as if schedule 1 had not been enacted; and

(b) compensation decided for the matter in the proceeding is taken to be the compensation decided under schedule 1, section 22 for the matter.

(3) In carrying out a review of the compensation or decided compensation under schedule 1, section 22, the Land Court must apply former section 145 or 191—

(a) as if the review were the proceeding mentioned in the section; and

(b) with other necessary changes.

(4) This section applies despite schedule 1, section 22(1).

779 Existing agreements about compensation

(1) This section applies if immediately before the commencement of this section an agreement was in force between—

(a) an exploration permit holder and an owner about the owner's entitlement under former section 145; or

(b) a mineral development licence holder and an owner about the owner's entitlement under former section 191.

(2) On the commencement, the agreement becomes a conduct and compensation agreement under schedule 1.

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780 Existing notices of entry

(1) This section applies if, before the commencement of this section, an exploration permit or mineral development licence holder had given an owner of land notice of entry under former section 163 or 211.

(2) Despite schedule 1, the notice of entry may be renewed under former section 164 or 212, but only to the extent it relates to—

(a) a preliminary activity; or

(b) an advanced activity stated in the notice.

(3) The notice of entry and any renewal of it under subsection (2) is taken to be an entry notice for schedule 1.

(4) To remove any doubt, it is declared that subsection (3) applies even though a copy of any document required, under schedule 1, to accompany an entry notice did not accompany the notice of entry.

781 Additional exemption to conduct and compensation agreement requirement

(1) This section applies—

(a) for the holder of an exploration permit or mineral development licence holder if the holder has given a converted entry notice; and

(b) until the earlier of the following to happen—

(i) the day that is 6 months after the relevant anniversary day for the exploration permit or mineral development licence;

(ii) 1 September 2011.

(2) During the term of the converted entry notice, including any renewed term, under former section 164 or 212, the conduct and compensation agreement requirement under schedule 1 does not apply to the holder.

(2A) A reference to conduct and compensation agreement requirement under schedule 1 in subsection (2) is taken to

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include a reference to conduct and compensation agreement requirement under the Common Provisions Act, chapter 3.

(3) In this section—

converted entry notice means a notice of entry that, under section 780(3), is taken to be an entry notice for schedule 1.

relevant anniversary day, for an exploration permit or mineral development licence, means the anniversary of the grant of the permit or licence that first occurs after the commencement of this section.

782 References to geothermal tenure

Until the *Geothermal Energy Act 2010*, chapter 10, part 1 commences, a reference in this Act to a geothermal tenure is taken to be a reference to a geothermal exploration permit.

Subdivision 3 Provisions for enactment of Geothermal Energy Act 2010

783 Definitions for sdiv 3

In this subdivision—

converted geothermal permit means a geothermal exploration permit under the repealed *Geothermal Exploration Act 2004* that, under the Geothermal Act, chapter 9, part 2 becomes a geothermal permit.

start day means the day section 318ELAM commences.

784 Existing mining tenement applications

(1) This section applies to a mining tenement application if—

(a) it was made before the start day; and

(b) there is an overlapping geothermal tenure for the proposed mining tenement.

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(2) The repealed coordination provisions cease to apply to the mining tenement application.

(3) Part 7AAC applies to the mining tenement application.

(4) If the mining tenement application is for a mining lease, subsections (5) to (9) apply for the application of part 7AAC under subsection (3).

(5) The mining lease application is taken to have been validly made even though it was made without complying with the requirements under section 318ELAQ.

(6) However, the applicant must, as soon as practicable after the start day, lodge with the mining registrar documents for the mining lease application that comply with the requirements.

(7) A reference to a mining lease application is taken to be a reference to the mining lease application and the documents.

(8) A reference to the making of a mining lease application is taken to be a reference to the lodgement of the documents.

(9) In this section—

converted geothermal permit application means a tender under the repealed *Geothermal Exploration Act 2004* for a proposed geothermal exploration permit that, under the Geothermal Act, chapter 9, part 2 becomes an application for a geothermal permit.

overlapping geothermal tenure means a geothermal tenure that is an overlapping authority (geothermal or GHG) for the proposed mining tenement, as defined under section 318ELAN.

repealed coordination provisions means the following provisions as in force before the start day—

(a) sections 51 and 248 to the extent they applied for a converted geothermal permit;

(b) section 249 to the extent it applied for a converted geothermal permit application.

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785 Existing mining claims consented to by geothermal permit holder

(1) This section applies to a mining claim granted before the start day for land in the area of a converted geothermal permit.

(2) Part 7AAC, division 5, subdivision 1 does not apply if the permit holder's written consent to the grant was given under section 51(1)(f) as in force before the start day.

Editor's note—

Part 7AAC, division 5, subdivision 1 (Restrictions on authorised activities for particular mining tenements)

Division 14 Transitional provision for Gas Security Amendment Act 2011

786 Date of effect of amended s 381A

Section 381A, as amended by the *Gas Security Amendment Act 2011*, is taken to have had effect on and from 5 November 2008.

Division 15 Transitional provision for Community Ambulance Cover Levy Repeal and Revenue and Other Legislation Amendment Act 2011

787 Particular applications taken to be properly made

(1) This section applies if—

(a) a mining lease application for land was made on or after 17 March 2008; and

(b) under section 318AQ, 318AR, 318BQ, 318BR, 318BY or 318CE as in force before the commencement of this section (each the ***unamended provision***), separate mining lease applications were required to be made for particular parts of the land; and

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(c) separate mining lease applications were not made as required by the unamended provision.

(2) Despite the noncompliance with the requirement, the application is taken to be, and is taken to always have been, a mining lease application for the land made under parts 7 and 7AA.

(3) However, subsection (2) applies only to the extent the application does not comply with the unamended provision.

(4) This section applies whether or not the application has been decided at the commencement.

Part 3 Transitional provisions for Mines Legislation (Streamlining) Amendment Act 2012—amendments commencing on assent

788 Definitions for div 16

In this division—

amending Act means the *Mines Legislation (Streamlining) Amendment Act 2012*.

commencement means the commencement of this section.

789 Particular land in a mining tenement's area taken before the commencement

(1) This section applies if—

(a) land in the area of a mining tenement was taken under a resumption law before the commencement; and

(b) at the commencement, the entity taking the land has not taken action indicating the mining tenement was extinguished (wholly or partly) when the land was taken.

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Examples of action for paragraph (b)—

- serving a copy of the resumption notice for the taking of the land on the mining tenement holder (in the holder's capacity as the holder of the tenement)
- entering into a resumption agreement under the ALA with the mining tenement holder for the taking of the land
- negotiating, or taking other action relating to, the compensation payable to the mining tenement holder for the taking of the land
- paying compensation to the mining tenement holder for the taking of the land
- arranging for the taking of the land to be recorded in the register against the mining tenement

(2) However, this section does not apply in relation to the taking of land in the area of a mining lease for a transport infrastructure purpose.

(3) The taking of the land did not extinguish (wholly or partly) the mining tenement or any other mining tenement interest relating to the tenement.

(4) Subsection (3) does not affect the ending of a mining tenement interest (wholly or partly) in any other way, including, for example—

(a) by the entity taking the land acquiring the mining tenement interest (wholly or partly) under a separate commercial agreement or other arrangement with the holder of the interest; or

(b) by the mining tenement interest holder surrendering the interest (wholly or partly) under this Act.

(5) In this section—

transport infrastructure purpose means a purpose relating to transport infrastructure within the meaning of the *Transport Infrastructure Act 1994*.

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790 Land in a mining tenement's area for which notice of intention to resume given before the commencement

(1) This section applies if—

(a) before the commencement, an entity gave a notice of intention to resume for the proposed taking, under a resumption law, of land in a mining tenement's area; and

(b) at the commencement, the land had not been taken under the resumption law.

(2) If the land is taken other than by taking or otherwise creating an easement, sections 10AAA to 10AAD apply in relation to the taking, except that the resumption notice for the taking may provide for the extinguishment of a mining tenement interest on the taking even if the notice of intention to resume does not comply with section 10AAA(8).

(3) If the land is taken by taking or otherwise creating an easement, section 10AAD applies in relation to the taking.

Part 4 Transitional provisions for Mines Legislation (Streamlining) Amendment Act 2012—amendments commencing by proclamation

Division 1 Preliminary

791 Definitions for div 17

In this division—

amending Act means the *Mines Legislation (Streamlining) Amendment Act 2012*.

commencement means the commencement of the section in which the term is used.

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former, for a provision of this Act, means the provision as in force immediately before the commencement of the section in which the term is used.

new, for a provision of this Act, means the provision as in force immediately after the commencement of the section in which the term is used.

Division 2 Provisions relating to exploration permits

792 Particular applications for exploration permits

(1) This section applies if—

(a) an application for an exploration permit was made before the commencement; and

(b) apart from this section, new section 131(1)(c) would prevent the grant of the exploration permit applied for.

(2) New section 131 does not apply for the application.

(3) The application must be decided under former section 131.

793 Periodic reduction in land covered by existing exploration permit

(1) This section applies to an exploration permit in existence immediately before the commencement.

(2) For the current remaining term of the exploration permit—

(a) new section 139 does not apply to the exploration permit; and

(b) the area of the exploration permit must be reduced under former section 139.

(3) In this section—

current remaining term means the period from the commencement until the expiry of the exploration permit.

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Division 3 Provisions relating to mining claims

794 Existing applications for mining claim if no referral to Land Court

(1) This section applies if, before the commencement—

(a) an application for a mining claim was made, but not decided, under part 4; and

(b) the application was not referred to the Land Court under section 72; and

(c) 1 or more of the following apply—

(i) there are no properly made objections to the application;

(ii) all properly made objections to the application are withdrawn;

(iii) the applicant abandons the application.

(2) The application may—

(a) be dealt with under section 74; or

(b) if the application for a mining claim has been abandoned—be dealt with under section 108.

(3) In this section—

properly made objection has the meaning given by former section 72.

795 Existing applications for mining claim or renewal of mining claim—term of claim

(1) This section applies if an application for a mining claim or renewal of a mining claim was made, but not decided, under part 4 before the commencement.

(2) Sections 91 and 93, as amended under the amending Act, apply to the grant of any mining claim or renewal for the application.

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Division 4 Provisions relating to mining leases

796 Existing applications for mining lease if no referral to Land Court

(1) This section applies if, before the commencement—

(a) an application for a mining lease was made, but not decided, under part 7; and

(b) the application was not referred to the Land Court under section 265; and

(c) 1 or more of the following apply—

(i) there are no properly made objections to the application;

(ii) all properly made objections to the application are withdrawn;

(iii) the applicant abandons the application.

(2) The application may—

(a) be dealt with under section 271; or

(b) if the application for a mining lease has been abandoned—be dealt with under section 307.

(3) In this section—

properly made objection has the meaning given by former section 265.

797 Existing referral of mining lease to Land Court

(1) This section applies if, before the commencement—

(a) an application for a mining lease was made, but not decided, under part 7; and

(b) the application was referred to the Land Court under section 265: and

(c) the Land Court has fixed a date for the hearing but the hearing has not started; and

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(d) either or both of the following apply—

(i) all properly made objections to the application are withdrawn;

(ii) the applicant abandons the application.

(2) Section 265, as amended under the amending Act, applies to the application.

(3) In this section—

properly made objection has the meaning given by former section 265.

798 Minister to decide particular applications for or about mining leases

(1) This section applies if—

(a) before the commencement, an application was made for—

(i) a mining lease under section 245; or

(ii) the renewal of a mining lease under section 286; or

(iii) the variation of conditions of a mining lease under section 294; or

(iv) the variation of a mining lease under section 295; or

(v) the consolidation of mining leases under section 299; or

(vi) a mining lease for the transportation of a thing through, over or under land under section 316; and

(b) the Governor in Council has not decided the application.

(2) The Minister must decide the application under—

(a) if the application is for a mining lease—new section 271A; or

(b) if the application is for the renewal of a mining lease—section 286A, as amended under the amending Act; or

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(c) if the application is for the variation of conditions of a mining lease—section 294, as amended under the amending Act; or

(d) if the application is for the variation of a mining lease—section 295, as amended under the amending Act; or

(e) if the application is for the consolidation of mining leases—section 299, as amended under the amending Act; or

(f) if the application is for a mining lease for the transportation of a thing—section 316, as amended under the amending Act.

Division 5 Provisions common to mining tenements

799 Unfinished actions under former s 96, 151, 198 or 300

(1) This section applies if a person had an obligation under former section 96, 151, 198 or 300 and the person had not discharged the obligation before the commencement.

(2) Despite the repeal of the section under the amending Act, the section continues to have effect in relation to the person until the obligation is discharged.

800 Deciding applications for approval of assessable transfers until commencement of particular provisions

(1) This section applies until the commencement of the *Environmental Protection Act 1994*, chapter 5A, part 4 as inserted by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

(2) Former section 391A continues in force instead of section 318AAX(4)(a)(ii), as inserted by the amending Act, for deciding whether to give an approval of an assessable transfer, as if an approval of an assessable transfer were a decision to assign a mining tenement.

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801 Continued functions for caveats received before the commencement

(1) Despite the repeal of sections 98 and 302 under the amending Act—

(a) former sections 98 and 302 continue to apply to the mining registrar in relation to a relevant caveat received by the mining registrar before the commencement; and

(b) former sections 153 and 200 continue to apply to the chief executive in relation to a relevant caveat received by the chief executive before the commencement.

(2) In this section—

***relevant caveat*—**

(a) for the mining registrar—means a caveat to which former section 98 or 302 applied; or

(b) for the chief executive—means a caveat to which former section 153 or 200 applied.

802 Continued functions for removal or withdrawal of caveat

Despite the repeal of sections 101, 156, 203 and 305 under the amending Act—

(a) former sections 101 and 305 continue to apply to the mining registrar in relation to the following—

(i) an order of the Land Court, under former section 101(3) or 305(3), that a caveat be removed;

(ii) a notice, under former section 101(5) or 305(5), about the withdrawal of a caveat if given to the registrar before the commencement; and

(b) former sections 156 and 203 continue to apply to the chief executive in relation to the following—

(i) an order of the Land Court, under former section 156(3) or 203(3) that a caveat be removed;

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(ii) a notice, under former section 156(5) or 203(5), about the withdrawal of a caveat if given to the chief executive before the commencement.

Division 6 Other provisions

803 Existing requests for information

(1) This section applies if a request for information was made, but not complied with, under the following provisions before the commencement—

(a) former section 133A;

(b) former section 147AA;

(c) former section 183A;

(d) former section 197AA;

(e) former section 245A;

(f) former section 286AA.

(2) On the commencement, the request is taken to have been made under section 386J(1).

804 Relocation and renumbering of provisions

(1) If a provision of this Act (a ***relocated or renumbered provision***) is relocated or renumbered by chapter 4 of the amending Act—

(a) the relocation or renumbering does not affect the operation or meaning of the relocated or renumbered provision; and

(b) unless a contrary intention appears in this Act, the relocated or renumbered provision is to be interpreted as if it had not been so relocated or renumbered.

(2) If a reference in a provision of this Act (the ***amended provision***) to a relocated or renumbered provision is amended

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by chapter 4 of the amending Act to reflect the new numbering of the relocated or renumbered provision—

(a) the amendment of the amended provision does not affect the operation or meaning of the relocated or renumbered provision or the amended provision; and

(b) unless a contrary intention appears in this Act, the relocated or renumbered provision and the amended provision are to be interpreted as if—

(i) the relocated or renumbered provision had not been so relocated or renumbered; and

(ii) the amended provision had not been so amended.

(3) Subsections (1) and (2) apply whether or not the relocated or renumbered provision, or the amended provision, is otherwise amended by the amending Act, but has effect subject to any amendment.

Part 5 Transitional provision for Fiscal Repair Amendment Act 2012

805 Application of Act to particular unpaid royalty

(1) This section applies if, immediately before 1 October 2012, an amount of royalty payable by a person to the State is unpaid (the ***unpaid royalty***).

(2) This Act as in force on 1 October 2012 applies in relation to the unpaid royalty on and from that day.

(3) For applying section 332 to the unpaid royalty under subsection (2), the start date is taken to be 1 October 2012.

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Part 6 Transitional provisions for Mining and Other Legislation Amendment Act 2013

Division 1 Provisions for amendments commencing on assent

806 Definition for div 1

In this division—

commencement means the commencement of this section.

807 Existing applications for exploration permits for minerals other than coal

(1) This section applies to an application for an exploration permit for a mineral other than coal that—

(a) was made before the commencement; and

(b) has not been decided at the commencement.

(2) The application must be decided under this Act as in force after the commencement.

808 Existing applications for exploration permits for coal

(1) This section applies to an application for an exploration permit for coal that—

(a) was made before the commencement; and

(b) has not been decided at the commencement.

(2) The application must be decided under this Act as in force before the commencement, as if the amending Act had not been enacted.

(3) In this section—

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amending Act means the *Mining and Other Legislation Amendment Act 2012*.

Division 2 Provisions for amendments commencing by proclamation

809 Definitions for div 2

In this division—

commencement means the commencement of this division.

pre-amended Act means this Act as in force before the commencement.

former, in relation to a provision of this Act, means the provision as in force before the commencement.

810 Application of former ss 61, 64 to 64D and 83

(1) Subsections (2) and (3) apply to an application for the grant of a mining claim made but not decided before the commencement.

(2) Former section 61(1)(j)(iv) continues to apply to the application as if the reference in the subparagraph to the mining registrar's satisfaction were a reference to the chief executive's satisfaction.

(3) Former sections 64 to 64D continue to apply to the application—

(a) as if a reference in the sections, other than former section 64C(2)(a), to a mining registrar were a reference to the chief executive; and

(b) as if the reference in former section 64C(2)(a) were a reference to the Minister.

(4) Subsection (5) applies to an application for the grant or renewal of a mining claim made but not decided before the commencement.

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(5) Former section 83(1) continues to apply to the application as if the reference in the subsection to the mining registrar were a reference to the Minister.

811 Provision about condition for work program

(1) Subsection (2) applies to a mining claim in force on the commencement if the claim was granted or renewed more than 5 years before the commencement.

(2) The condition mentioned in section 81(1)(c) as in force after the commencement applies to the mining claim only if it is renewed after the commencement.

(3) Subsection (4) applies to a mining claim in force on the commencement if—

(a) the claim was granted or renewed for a term of more than 5 years; and

(b) the fifth anniversary of the grant or renewal of the claim happens within 6 months after the commencement.

(4) Section 81(1)(c) as in force after the commencement applies to the claim as if the condition under that paragraph required the holder of the claim to give the chief executive a work program for the claim within 7 months after the commencement.

812 Application of s 93 to renewal of mining claim

(1) This section applies to an application for renewal of a mining claim made but not decided before the commencement.

(2) Section 93(2)(b) as in force after the commencement does not apply to the application.

813 Persons taken to be authorised officers

(1) This section applies to a person who, immediately before the commencement, is a mining registrar, deputy mining registrar,

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field officer, other officer or other person appointed under the pre-amended Act, former section 336(1) or (3).

(2) On the commencement, the person is taken to be appointed as an authorised officer.

814 References to repealed terms in former provisions and other documents

(1) This section applies if, on the commencement, a reference in a former provision to a mining registrar or deputy mining registrar becomes a reference to an authorised officer, the chief executive or the Minister (the ***replacement entity***).

(2) If necessary or convenient for the operation of this Act—

(a) a thing done by or given to a mining registrar or deputy mining registrar under the former provision is taken to have been done by or given to the replacement entity; and

(b) an application made, or that could be made, to a mining registrar or deputy mining registrar under the former provision is taken to have been made, or may be made, to the replacement entity; and

(c) an approval, permit, lease, licence or other authorisation, however called, or other thing granted or given by a mining registrar or deputy mining registrar under the former provision is taken to have been granted or given by the replacement entity; and

(d) an action taken by, or to be taken by, a mining registrar or deputy mining registrar under the former provision is taken to have been taken, or may be taken, by the replacement entity; and

(e) a decision, direction, recommendation or requirement made by, or to be made by, a mining registrar or deputy mining registrar under the former provision is taken to have been made by, or may be made by, the replacement entity; and

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(f) a reference in the former provision to a mining registrar or deputy mining registrar is, if the context permits, taken to be a reference to the replacement entity; and

(g) a reference in a document to a mining registrar or deputy mining registrar is, if the context permits, taken to be a reference to the replacement entity.

(3) If necessary or convenient for the operation of this Act, the replacement entity may deal with a matter mentioned in subsection (2) in compliance with the Act as in force after the commencement.

815 Other references to repealed terms

In a document or other Act, a reference to a following term under the pre-amended Act may, if the context permits, be taken as a reference to an authorised officer—

(a) mining registrar;

(b) deputy mining registrar;

(c) relevant officer.

816 Conversion of mining lease to mining claim

(1) This section applies to a mining lease or mining leases for corundum, gemstones or other precious stones if—

(a) the area of the mining lease, or combined area of the mining leases, is not more than 40ha; and

(b) for 2 or more mining leases—

(i) the land in the area of the leases is contiguous; and

(ii) the holder of the mining leases is the same entity.

(2) The holder of the mining lease or mining leases may, within 2 years after the commencement, apply to the Minister to convert the whole area of the mining lease or mining leases to a mining claim, of not more than 20ha, or 2 mining claims, of not more than 20ha each, applying to corundum, gemstones or other precious stones.

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(3) The application must—

(a) be in the approved form; and

(b) state the name of each applicant; and

(c) state the number of the mining lease or mining leases; and

(d) define the boundaries of the land to be included in the mining claim or mining claims; and

Note—

Section 386R sets out the requirements for defining the boundary of the area of a proposed mining tenement.

(e) describe all parcels of land the whole or part of which are the subject of the application and state the name and address of each owner of the land and of land that is to be used as access; and

(f) for each proposed mining claim, define the boundary of any land outside the area of the proposed mining claim intended to be used to access the proposed claim area; and

(g) be accompanied by a sketch, map or other graphic representation the chief executive considers appropriate setting out the boundaries of the land to be included in the mining claim or mining claims and the land to be used as access; and

(h) be accompanied by a work program for the activities to be carried out under the mining claim or mining claims; and

(i) identify the mineral or minerals for which the mining claim or mining claims is sought.

(4) If a mining lease or mining leases are converted to a mining claim or mining claims under this section—

(a) the area of the mining claim or mining claims must include the whole of the surface of the land within the mining lease or mining leases and can not include any other land; and

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(b) the term of the mining claim or mining claims end on the first of the following to happen—

(i) the day that is 10 years after the conversion;

(ii) if only 1 mining lease is converted—the day the term of the mining lease would have ended if it had not been converted;

(iii) if more than 1 mining lease is converted—the first day the term of any of the mining leases would have ended if that mining lease had not been converted.

(5) The Minister must consider an application made under this section and decide to grant or refuse the application.

(6) The Minister may grant the application if satisfied the holder has complied with the conditions of the relevant mining lease and this Act in relation to the lease.

(7) If the Minister decides to grant the application, the chief executive must—

(a) give the applicant notice of the decision; and

(b) record particulars of the conversion in the register.

(8) If the Minister decides to refuse the application, the chief executive must give the applicant notice of the decision and reasons for it.

(9) On the recording of the particulars of the conversion in the register—

(a) the relevant mining lease is taken to be a mining claim; and

(b) any security deposited under this Act for the lease is taken to be a security deposited for the mining claim.

(10) If a relevant mining lease is subject to a condition that it can not be renewed or further renewed, the converted mining claim is subject to a condition that it can not be renewed.

(11) Without limiting section 81 or subsection (10), a converted mining claim is subject to the conditions decided by the

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Minister and stated on the notice mentioned in subsection (7)(a).

(12) If the term of a relevant mining lease would, but for this subsection, end before the application is decided, the lease is taken to continue in force until the application is decided.

(13) In this section—

relevant mining lease, for an application, means the mining lease to which the application relates.

Part 7 Transitional provisions for Transport and Other Legislation Amendment Act 2014

817 Mining lease application not decided before the commencement

(1) This section applies to a mining lease application for land mentioned in section 271A that, on the commencement of this section, has not been decided by the Minister.

(2) Section 271A(3) applies to the application.

Part 8 Transitional provisions for State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Act 2014

818 Application of repealed ss 334Z and 334ZA

(1) This section applies to—

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(a) a person who, immediately before the commencement, may have made an application under previous section 334Z or 334ZA to include land in a mining tenement; or

(b) an application made, but not decided, before the commencement, under previous section 334Z or 334ZA to include land in a mining tenement.

(2) Despite the repeal of previous sections 334Z and 334ZA, each previous section continues to apply—

(a) to a person mentioned in subsection (1)(a); and

(b) for deciding an application under the previous section to include land in a mining tenement.

(3) In this section—

amending Act means the *State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Act 2014*.

commencement means the commencement of this section.

previous, for a provision of this Act, means the provision as in force immediately before the repeal of the provision under the amending Act.

Part 9 Transitional provisions for Revenue Legislation Amendment Act 2014

820 Definition for pt 9

In this part—

commencement means the commencement of the provision in which the term is used.

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821 Application of particular provisions for previous section 326 records

(1) This section applies to a person in relation to a record required to be kept by the person under section 326 as in force immediately before the commencement (***previous section 326***).

(2) On and from the commencement—

(a) previous section 326(2) continues to apply to the person in relation to the record; and

(b) if the person is no longer the holder of a mining claim or mining lease or a person who otherwise mines mineral from land, sections 326A, 326B and 326D also apply to the person in relation to the record.

822 Application of ch 11, pt 3, divs 2 and 3 for royalty payable for period occurring before 1 July 2014

(1) Chapter 11, part 3, divisions 2 and 3, as in force on and from 1 July 2014, applies in relation to a royalty-related amount payable by a person for a period even if—

(a) the period started before 1 July 2014; and

(b) a person is liable to pay a royalty penalty amount because of a particular act or omission mentioned in section 331F, and that occurred before 1 July 2014.

Example—

The Minister may make an assessment, reassessment or default assessment of a royalty-related amount payable by a person for a period under chapter 11, part 3, division 2 as in force on and from 1 July 2014, even if the period started before 1 July 2014.

(2) For applying subsection (1) to royalty payable for a period occurring before 1 July 2014, an assessment or reassessment of royalty for the period that was made under the Act as in force before 1 July 2014 is taken to be an original assessment or reassessment, as the case may be, for chapter 11, part 3.

(3) Subsection (4) applies if—

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(a) the royalty paid by a person for a period that ended before 1 July 2014 is less than the royalty payable by the person for the period (a ***royalty shortfall***); and

(b) before 31 December 2014, the person gives the Minister notice, in the approved form, of the royalty shortfall, including the amount of the royalty shortfall; and

(c) before the person gives the Minister the notice, the Minister has not already notified the person of the royalty shortfall; and

(d) after the commencement, the Minister makes a default assessment or reassessment of the royalty payable by the person for the period.

(4) The person is not, under section 331E, liable for a royalty penalty amount in relation to the royalty shortfall under the default assessment or reassessment.

(5) Subsection (2), as amended by the *Revenue Legislation Amendment Act 2018*, is taken to have applied from 1 July 2014.

Note—

For the validity of assessments and reassessments of royalty made before 1 July 2014, see also section 844.

823 Application of s 333J to particular administrators

Section 333J applies to an administrator appointed before the commencement as if the required date for section 333J(1) were the later of the following—

(a) the date 14 days after the commencement; or

(b) the required date for section 333J(1).

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Part 10 Transitional provisions for Mineral and Energy Resources (Common Provisions) Act 2014

824 Continued appeal right for particular decisions

(1) If, before the commencement of this section, a person may have appealed to the Land Court against a decision of the Minister to refuse to approve an assessable transfer under previous section 318AAZM, the person may still appeal against the decision, in compliance with chapter 7, part 4.

(2) A person who, before the commencement of this section, may have applied to the Land Court for a review of a road use direction under previous section 406, may still apply to the Land Court for the review in compliance with section 406(2) to (7).

(3) In this section—

previous section 318AAZM means section 318AAZM as in force immediately before its amendment under the Common Provisions Act, section 366.

previous section 406 means section 406 as in force immediately before its amendment under the Common Provisions Act, section 370.

825 Existing practice manuals

(1) A practice manual kept under former section 416B continues in effect until the chief executive makes a manual available under the Common Provisions Act, section 202(4)(b).

(2) In this section—

former section 416B means section 416B as in force immediately before the commencement of this section.

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826 Application of incidental coal seam gas provisions

(1) Subject to subsections (2), (3) and (4), the new incidental coal seam gas provisions apply to a mining lease whether the mining lease is granted before or after the commencement.

(2) Subsection (3) applies if—

(a) a person holds an ML (coal) granted before the commencement; and

(b) another person holds—

(i) an ATP, whenever granted; or

(ii) a PL, whenever granted; and

(c) the area of the ML (coal) and the ATP or PL overlap.

(3) Chapter 8, part 8, as in force before the commencement continues to apply as if the new incidental coal seam gas provisions had not commenced.

(4) Despite subsection (3), the new incidental coal seam gas provisions apply to an ML (coal) granted before the commencement if—

(a) the ML (coal) holder offers to supply any incidental coal seam gas in the overlapping area to an ATP or PL holder under the Common Provisions Act, section 138; and

(b) the ATP or PL holder does not accept the offer under the Common Provisions Act, section 138.

(5) However, for applying the Common Provisions Act, section 138, each of the following applies—

(a) the written notice of the offer given under section 138(2) need not comply with the requirements under paragraphs (a) to (c) of section 138(2);

(b) section 138(3) is taken to provide only that the petroleum resource authority holder may accept the offer within 12 months after receiving the written notice, or a later period agreed to by the ML (coal) holder;

(c) the reference in section 138(7) to ‘gas offered to a petroleum resource authority holder under

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subsection (2)(a)' is taken to be a reference to 'undiluted incidental coal seam gas offered to a petroleum resource authority holder under subsection (2)'.

(6) In this section—

amended means amended, repealed or inserted by the Common Provisions Act.

ATP see the Common Provisions Act, section 103.

commencement means the commencement of this section.

mining lease means a coal mining lease or an oil shale mining lease.

ML (coal) see the Common Provisions Act, section 103.

new incidental coal seam gas provisions means sections 318CL, 318CN, 318CNA and 318CO, as amended by the Common Provisions Act.

PL see the Common Provisions Act, section 103.

827 Applications for mineral development licences accepted before commencement

(1) This section applies if, before the commencement, the chief executive accepted under the pre-amended Act, as in force from time to time before the commencement, an application for the grant of a mineral development licence.

(2) The pre-amended Act, as in force immediately before the commencement, continues to apply to the application as if the Common Provisions Act, chapter 9, part 7, division 9 had not been enacted.

(3) In this section—

commencement means the commencement of this section.

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828 Mining claim application certificates given before commencement

(1) This section applies if, before the commencement, an applicant for the grant of a mining claim was given a mining claim application certificate under the pre-amended Act, section 64, as in force from time to time before the commencement.

(2) The pre-amended Act, as in force immediately before the commencement, continues to apply to the application as if the Common Provisions Act, chapter 9, part 7, division 9 had not been enacted.

(3) In this section—

commencement means the commencement of this section.

829 Certificates of applications for a mining lease given before commencement

(1) This section applies if, before the commencement, an applicant for the grant of a mining lease is given a certificate of application for a mining lease under the pre-amended Act, section 252, as in force from time to time before the commencement.

(2) The pre-amended Act, as in force immediately before the commencement, continues to apply to the certificate of application as if the Common Provisions Act, chapter 9, part 7, division 9 had not been enacted.

(3) In this section—

commencement means the commencement of this section.

pre-amended Act means this Act as in force before the commencement.

830 Certificates of public notice given before commencement

(1) This section applies if, before the commencement, an applicant for the grant of a mining lease is given a certificate

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of public notice under the pre-amended Act, section 252A, as in force from time to time before the commencement.

(2) The pre-amended Act, as in force immediately before the commencement, continues to apply to the application as if the Common Provisions Act, chapter 9, part 7, division 9 had not been enacted.

(3) In this section—

commencement means the commencement of this section.

pre-amended Act means this Act as in force before the commencement.

833 Act as in force on relevant day continues to apply for particular mining leases

(1) This section applies if—

(a) an application for a mining lease over non-exclusive land—

(i) was lodged during the period from 18 September 2000 to 31 March 2003, both days inclusive; or

(ii) is a relevant previous application; and

(b) immediately before the commencement of this section, the application had not been decided.

(2) This Act, as in force on the relevant day for the mining lease, continues to apply—

(a) to the granting of the mining lease; and

(b) if the mining lease is granted—to a variation or renewal of the mining lease.

(3) In this section—

native title provisions start day, for an application for a mining lease, means the native title provisions start day notified in relation to the application under section 725(3) and (4).

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non-exclusive land means land over which native title has not been extinguished, but only to the extent that the land is a place mentioned in the Commonwealth Native Title Act, section 26(3).

relevant day, for a mining lease, means—

(a) if the application for the mining lease is a relevant previous application—the native title provisions start day for the application; or

(b) otherwise—the day the application for the mining lease was lodged.

relevant previous application means an application—

(a) lodged before 18 September 2000; and

(b) in relation to which the Minister has notified a native title provisions start day.

Note—

See section 842 for the application of this provision.

834 Relevant provisions continue to apply for particular mining tenements

(1) This section applies for a mining tenement if the mining tenement was granted before the commencement of this section.

(2) This Act, as in force immediately before the commencement of this section, continues to apply to the mining tenement.

Note—

See section 843 for the application of this provision.

837 Validation of conversion of mining lease to mining claim

(1) This section applies to the conversion of a mining lease or mining leases for corundum, gemstones or other precious stones under section 816 before the commencement of this section.

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(2) If the conversion was to a mining claim, of not more than 20 ha, or 2 mining claims, of not more than 20ha each, the conversion is taken to be, and always to have been, validly made under section 816.

Part 10A Other provision for Mineral and Energy Resources (Common Provisions) Act 2014

837A Application of Common Provisions Act, s 138 to particular coal mining leases

(1) This section applies if—

(a) the area of a coal mining lease granted after the relevant commencement overlaps the area of a petroleum lease granted before the relevant commencement; and

(b) the new overlap provisions do not apply to the circumstance of the overlap under the Common Provisions Act, section 232(2).

(2) For applying the Common Provisions Act, section 138 to the coal mining lease, each of the following applies—

(a) the written notice of the offer given under section 138(2) need not comply with the requirements under section 138(2)(a) to (c);

(b) section 138(3) is taken to provide only that the petroleum lease holder may accept the offer within 12 months after receiving the written notice, or a later period agreed to by the coal mining lease holder;

(c) the reference in section 138(7) to 'gas offered to a petroleum resource authority holder under subsection (2)(a)' is taken to be a reference to 'undiluted incidental coal seam gas offered to a petroleum resource authority holder under subsection (2)'.

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(3) This section applies to a coal mining lease mentioned in subsection (1) even if it was granted before the commencement of this section.

(4) In this section—

new overlap provisions means the Common Provisions Act, chapter 4.

relevant commencement means the commencement of section 826.

Part 11 Transitional provision for Mineral Resources (Aurukun Bauxite Resource) Amendment Act 2016

838 Amended Act applies to existing mineral development licence applications

This Act, as in force after the commencement of the *Mineral Resources (Aurukun Bauxite Resource) Amendment Act 2016*, applies to an application for a mineral development licence made under chapter 5, part 2 whether the application was made before or after the commencement.

Part 12 Transitional provision for Water Reform and Other Legislation Amendment Act 2014

839 Restriction on entitlement to use underground water—Act, s 334ZP

(1) This section applies in relation to a mineral development licence or mining lease if, before the commencement—

(a) either—

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(i) an environmental authority was granted in relation to the mineral development licence or mining lease; or

(ii) an application for an environmental authority, or for an amendment of an environmental authority, in relation to the mineral development licence or mining lease was made but not decided; or

(iii) if an environmental authority in relation to the mineral development licence or mining lease had not been granted or applied for—there is a notified coordinated project in relation to the licence or lease; and

(b) the entity who is or will be the holder of the mineral development licence or mining lease did not hold, but would have been required to hold, a water licence or water permit to take or interfere with underground water in the area of the licence or lease if the taking or interference were to have happened during the course of, or as a result of, the carrying out of authorised activities for the licence or lease.

(2) Section 334ZP does not apply to the holder of the mineral development licence or mining lease until the holder has an associated water licence to take or interfere with associated water in the area of the licence or lease.

(3) For the purposes of section 334ZP(8) and (9), an associated water licence is taken to be a water licence.

(4) This section applies whether the mineral development licence or mining lease was granted before or after the commencement.

(5) In this section—

associated water means underground water taken or interfered with in the circumstances mentioned in subsection (1)(b).

associated water licence see the Water Act, section 1250B.

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notified coordinated project means a coordinated project under the *State Development and Public Works Organisation Act 1971* for which—

(a) an environmental impact statement is required; and

(b) the Coordinator-General has publicly notified under section 29 of that Act that an EIS is required for the project; and

(c) either—

(i) the Coordinator-General has publicly notified under that section that comments on the draft terms of reference are invited; or

(ii) if the Coordinator-General has not publicly notified that comments on the draft terms of reference are invited—the terms of reference are finalised under section 30(3) of that Act.

Part 13 Transitional provisions for Mineral, Water and Other Legislation Amendment Act 2018

840 Determining compensation for applications for grant or renewal of mining claims and mining leases made before commencement

(1) This section applies to an application for the grant or renewal of a mining claim or mining lease if—

(a) the application was made before the commencement; and

(b) immediately before the commencement—

(i) the application had not been decided; and

(ii) compensation in relation to the grant or renewal of the mining claim or mining lease had not been

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determined as mentioned in section 85(1)(a) or 279(1)(a).

(2) This Act, as in force immediately before the commencement, continues to apply in relation to determining compensation in relation to the grant or renewal of the mining claim or mining lease as if the *Mineral, Water and Other Legislation Amendment Act 2018* had not been enacted.

841 Continuing effect of consent to enter reserve

A written consent given by an owner of a reserve to a person under schedule 1, section 4 before the commencement continues in effect as if the *Mineral, Water and Other Legislation Amendment Act 2018* had not been enacted.

842 Application of s 833 for particular mining leases

(1) Section 833—

(a) applies only to an application for a mining lease over non-exclusive land if, immediately before its omission, former schedule 1A, part 6 applied to the application; and

(b) is taken to have always applied only to an application mentioned in paragraph (a).

(2) This section applies despite section 833.

(3) In this section—

former schedule 1A, part 6 means schedule 1A, part 6 as in force immediately before its omission under the Common Provisions Act.

non-exclusive land see section 833(3).

843 Application of s 834 for particular mining tenements

(1) Section 834—

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(a) applies only to a mining tenement if, immediately before its omission, former schedule 1A, part 6 applied to the mining tenement; and

(b) is taken to have always applied only to a mining tenement mentioned in paragraph (a).

(2) This section applies despite section 834.

(3) In this section—

former schedule 1A means schedule 1A as in force immediately before its omission under the Common Provisions Act.

Part 14 Transitional provisions for Revenue Legislation Amendment Act 2018

844 Validity of assessments and reassessments of royalty made before 1 July 2014

(1) This section applies to an assessment or reassessment of royalty purportedly made under this Act as in force before 1 July 2014.

(2) The assessment or reassessment is taken to have been validly made.

845 Gross value royalty decisions—periods occurring before 1 September 2013

(1) This section applies in relation to minerals sold, disposed of or used before 1 September 2013.

(2) For assessing or reassessing royalty payable for the minerals, the repealed regulation is taken to have provided that a gross value royalty decision, or an amended gross value royalty decision, may have applied—

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(a) to a return period whether or not a person had lodged a royalty return for the period; and

(b) for a period starting or ending before the decision was made or amended.

Note—

See, however, section 331B in relation to the circumstances in which a reassessment of royalty payable for the minerals may be made.

(3) For subsection (2)—

(a) section 43D(2) of the repealed regulation does not apply; and

(b) any of the following notices or applications may be given or made at any time—

(i) a notice asking a holder to apply for a gross value royalty decision under section 43D of the repealed regulation;

(ii) a notice proposing to amend a gross value royalty decision under section 43I of the repealed regulation;

(iii) an application to amend a gross value royalty decision under section 43J of the repealed regulation.

(4) Subsections (2) and (3) apply despite sections 43D(3), 43F(6), 43I(1)(a), 43J(2) and 43K(2) of the repealed regulation as in force from time to time before 1 September 2013.

(5) In this section—

repealed regulation means the *Mineral Resources Regulation 2003*.

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Part 15 Transitional provisions for Natural Resources and Other Legislation Amendment Act 2019

846 Power of Minister to refuse application for mining claim if compensation not determined

(1) This section applies in relation to an application for a mining claim made before the commencement but after 24 October 2018.

(2) Section 85A applies in relation to the application.

(3) For subsection (2), it does not matter if a day mentioned in section 85A(1)(d) is before the commencement.

847 Power of Minister to refuse application for mining lease if compensation not determined

(1) This section applies in relation to an application for a mining lease made before the commencement but after 24 October 2018.

(2) Section 279A applies in relation to the application.

(3) For subsection (2), it does not matter if a day mentioned in section 279A(1)(d) is before the commencement.

848 Chief executive's power to refund application fee

(1) This section applies in relation to an application for a resource authority made, but not decided, before the commencement.

(2) Section 386PA does not apply in relation to the application.

(3) The Act as in force before the commencement continues to apply in relation to the refund of all or part of any fee paid for the application.

(4) In this section—

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resource authority does not include a water monitoring authority.

Part 16 Declaratory and validating provisions relating to regulations

865 Declaration about *Mineral Resources Regulation 2003*

(1) The repealed *Mineral Resources Regulation 2003*, as in force from time to time before its repeal, is taken to have had effect for the declaration period as if it were amended as provided in this section.

(2) Schedule 4, part 2, section 2, after 'royalty rate for bauxite'—

insert—

sold, disposed of or used in a return period by the holder of the mining lease for the bauxite

(3) Schedule 4, part 2, section 2(a), from 'if it is sold' to 'for the bauxite'—

omit, insert—

if the bauxite is mined for consumption outside the State

(4) Schedule 4, part 2, section 2(b), from 'if it is sold' to 'for the bauxite'—

omit, insert—

if the bauxite is mined for consumption within the State

(5) Schedule 4, part 2, section 2(b)(i), from 'for a holder' to 'outside the State'—

omit, insert—

for a holder who has also sold, disposed of or used bauxite in the return period that is mined for

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consumption outside the State

(6) In this section—

declaration period means the period from the commencement of the *Mines and Energy Legislation Amendment Regulation (No. 2) 2008* until the commencement of the *Mineral Resources Regulation 2013*.

866 Declaration about *Mineral Resources Regulation 2013*

(1) The *Mineral Resources Regulation 2013* is taken to have had effect for the declaration period as if it were amended as provided in this section.

(2) Schedule 3, section 4, after 'royalty rate for bauxite'—

insert—

sold, disposed of or used in a return period by the holder

(3) Schedule 3, section 4(a), from 'if it is sold' to 'for the bauxite'—

omit, insert—

if the bauxite is mined for consumption outside the State

(4) Schedule 3, section 4(b), from 'if it is sold' to 'for the bauxite'—

omit, insert—

if the bauxite is mined for consumption within the State

(5) Schedule 3, section 4(b)(i), from 'for a holder' to 'outside the State'—

omit, insert—

for a holder who has also sold, disposed of or used bauxite in the return period that is mined for consumption outside the State

(6) In this section—

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declaration period means the period from the commencement of the *Mineral Resources Regulation 2013* until the commencement of the *Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Act 2019*, part 10A.

867 Application of ss 865 and 866 for all purposes and validation of relevant acts

(1) Sections 865 and 866 apply for all purposes, including for the purpose of any of the following that has been done, or is done, under this Act—

(a) making an assessment;

(b) lodging a royalty return;

(c) paying a royalty-related amount;

(d) making a requirement to make a payment, keep a record, give a royalty estimate or do anything else relating to a royalty.

(2) A person's liability to pay a royalty-related amount and all other rights and liabilities are declared to be, and to have been since the commencement of the *Mines and Energy Legislation Amendment Regulation (No. 2) 2008*, for all purposes the same as if the regulations mentioned in sections 865 and 866 had been amended as provided in those sections.

868 Application to all legal proceedings

This part applies for the purpose of any legal proceeding, including a proceeding started before the commencement of this part.

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Part 17 Validation provision for Revenue and Other Legislation Amendment Act 2019

869 Giving of documents by Minister under royalty provisions before commencement

A document purportedly given to a person by the Minister under a royalty provision before the commencement is taken to have been validly given, whether or not a requirement about the giving of the document under this Act as in force before the commencement was complied with.

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Schedule 1 Conditions of carrying out activity for boundary definition purposes

section 386V(3)(b)

1 Notice of entry to owner or occupier

(1) Before a person first enters land under section 386V, the person must give the owner of the land written notice (an ***entry notice***) of the proposed entry.

(2) If the owner of the land can not be easily contacted, the person may give the entry notice to the occupier of the land.

Examples of the owner not being easily contacted—

1 The owner does not live in Australia and there is no known current address for the owner.

2 The owner is travelling within Australia and there is no known current address for the owner.

(3) The entry notice must be given at least 10 business days before the intended entry, or a shorter time acceptable to the owner or the occupier and endorsed on the notice.

(4) If the person satisfies the chief executive it is impracticable to give an entry notice to the owner or occupier of the land, the chief executive may, by written notice, dispense with the need to give the notice.

(5) However, before dispensing with the need to give an entry notice, the chief executive may, by written notice, require the person to take the action the chief executive considers appropriate to publicise the proposed entry, including, for example, publishing an advertisement in a newspaper.

(6) If the chief executive requires the person to take action under subsection (5), the person must take the required action.

2 Consent for restricted land

(1) A person may enter restricted land under section 386V only—

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(a) with the written consent of each relevant owner or occupier of the land; and

(b) if any consent is given on conditions—in compliance with the conditions.

(2) Any consent given under this section can not be withdrawn during the period stated in the consent as the period during which the person given the consent may enter the restricted land.

(3) In this section—

relevant owner or occupier, for restricted land, means the relevant owner or occupier for the land under the Common Provisions Act, section 69.

restricted land means land within 50m of any area, building or structure mentioned in the Common Provisions Act, section 68(1).

3 Consent for entry of occupied land at night

(1) A person may enter occupied land under section 386V at night only—

(a) with the written consent of the owner of the land or the chief executive; and

(b) if the consent is given on conditions—in compliance with the conditions.

(2) In the absence of evidence to the contrary, the consent of an owner who is a joint tenant or tenant in common is taken to be the consent of all the owners.

(3) If the owner of the land can not be easily contacted, a consent may be given for the land by the land's occupier.

Examples of the owner not being easily contacted—

1 The owner does not live in Australia and there is no known current address for the owner.

2 The owner is travelling within Australia and there is no known current address for the owner.

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(4) Consent under this section may be given on conditions which must be stated on the consent.

4 Entry to reserve

(1) A person may enter the surface of a reserve under section 386V only—

(a) if the person has complied with section 1; and

(b) if an owner of the reserve imposes conditions on the entry—in compliance with the conditions.

(2) A condition imposed under subsection (1)(b) must be a reasonable and relevant condition about the entry to the reserve or the carrying out of an activity under section 386V on land in the area of the reserve.

5 Consent of holder of, or applicant for, particular mining tenement

(1) A person may enter land under section 386V within 50m laterally of a place where activities are being carried out under an exploration permit only with the written consent of the exploration permit holder.

(2) A person may enter land under section 386V that is in the area of a mining claim, mineral development licence or mining lease held by someone else only with the written consent of the holder of the claim, licence or lease.

(3) A person may enter land under section 386V that is covered by an application for a mining claim, mineral development licence or mining lease made by someone else only with the written consent of the applicant for the claim, licence or lease.

6 Carrying out activity in area of particular resource authorities

(1) A person may carry out an activity under section 386V on land in the area of a prospecting permit or non-mining resource authority held by someone else only if carrying out the activity does not adversely affect the carrying out of an

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authorised activity for the prospecting permit or non-mining resource authority.

(2) Subsection (1) applies whether or not the authorised activity for the prospecting permit or non-mining resource authority has already started.

(3) In this section—

non-mining resource authority means a resource authority under the Common Provisions Act that is not a mining tenement.

7 Compensation

(1) A person who carries out an activity under section 386V on land is liable to pay the owner or occupier of the land compensation for any damage caused by the activity or any injury suffered or loss incurred by the owner or occupier in relation to the activity.

(2) Subsection (1) applies to damage caused by, or injury suffered or loss incurred in relation to, the carrying out of the activity by—

(a) the person; or

(b) another person authorised by the person to carry out the activity.

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Schedule 2 Dictionary

section 5

abandoned mine, for chapter 13, part 4, see section 344.

acquired land—

1 Land is *acquired land* if—

(a) it was taken under a resumption law, other than by taking or otherwise creating an easement; and

(b) under section 10AAA, all mining tenement interests relating to the land were extinguished on the taking.

2 However, land mentioned in paragraph 1 stops being *acquired land* if it is included in the area of a new or renewed mining tenement granted under this Act.

activity report—

(a) for an exploration permit—see section 178A(a); or

(b) for a mineral development licence—see section 231AA(a); or

(c) for a mining lease—see section 315(1)(a).

adjacent lease see section 318CP(a).

adjoining lots includes lots that would be adjoining lots if they were not separated by a road.

administrator, for chapter 11, part 3, division 6, see section 333I.

affected land, for chapter 12, part 2, see section 334Q.

aggrieved person see—

- section 38
- section 116.

ALA means the *Acquisition of Land Act 1967*.

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applicant, for chapter 9, see section 318ELAP(a).

application, for an exploration permit, includes an EP tender.

application transfer see section 318AAN.

apply, in relation to making an application, has the meaning affected by section 386O.

appropriately qualified, for the performance of a function or exercise of a power, includes having the qualifications, experience and competence to perform the function or exercise the power.

approved form see section 416A.

area—

1 The *area*, of a mining tenement, is the land to which the tenement is subject.

Note—

See, however, section 10AAB in relation to the exclusion of land from a mining tenement's area following the taking of the land under a resumption law.

2 The *area*, of a petroleum tenure, is the land to which the tenure is subject as recorded in the register.

3 The *area*, of a GHG authority, is the land to which the authority is subject, as recorded in the register.

4 The *area*, of a geothermal tenure, is the land to which the tenure is subject, as recorded in the register.

5 The *area*, of an application for the grant of a mining tenement, a petroleum tenure, a GHG authority or a geothermal tenure, is the land the subject of the application.

assessment, for chapter 11, part 3, see section 331.

assessment criteria, for chapter 9, see section 318ELAQ(1)(b).

assessment notice, for chapter 11, part 3, see section 331D(1).

At Risk agreement means the document called the 'At Risk' agreement endorsed by Cabinet on 5 April 1988, and that

document as amended and endorsed by Cabinet from time to time.

Aurukun agreement means an agreement between the State and a person selected by the State to develop an Aurukun project.

***Aurukun project*—**

1 *Aurukun project* means a project for the extraction, transportation and processing of bauxite on—

(a) land that is more or less the land described as 'restricted area 315' (RA315) under this Act; or

(b) a part of the land mentioned in paragraph (a).

2 *Aurukun project* includes the construction and operation of works, including, for example, mining equipment, electricity generation plants and related distribution infrastructure, pipelines, telecommunications infrastructure, water storage and distribution infrastructure, buildings, conveyors, roads or railways on land near Aurukun and Weipa.

***authorised activity*—**

1 An *authorised activity*, for a mining tenement, is an activity that its holder is, under this Act or the tenement, entitled to carry out in relation to the tenement.

Note—

The carrying out of particular activities on particular land in a mining tenement's area may not be authorised following the taking of the land under a resumption law. See section 10AAB.

2 An *authorised activity*, for a petroleum tenure, is an activity that its holder is, under the *Petroleum Act 1923*, the Petroleum and Gas (Production and Safety) Act or the tenure, entitled to carry out in relation to the tenure.

3 An *authorised activity*, for a GHG authority, is an activity that its holder is, under the GHG storage Act or the authority, entitled to carry out in relation to the authority.

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4 An *authorised activity*, for a geothermal tenure, is an activity that its holder is, under the Geothermal Act or the tenure, entitled to carry out in relation to the tenure.

authorised officer means a person appointed as an authorised officer under section 336.

authorised person, for chapter 13, part 4, see section 344.

authority to prospect see section 318AI(2).

block means a block as described in section 126.

building means a fixed, roofed structure that is completely or partly enclosed by walls.

cadastral surveyor means a person registered as a cadastral surveyor under the *Surveyors Act 2003*.

call for EP (coal) tenders see section 136C(1).

call for EP (non-coal) tenders see section 136A(2).

Cherwell Creek, for chapter 12, part 4, see section 334ZB.

civil penalty means a civil penalty provided for under a regulation made under section 321A.

closing time, for a call for EP (coal) tenders or a call for EP (non-coal) tenders, see section 136C(2)(b).

coal exploration tenement see section 318AE(1).

coal interest, for chapter 4, part 3, division 5, see section 136O.

coal mining lease see section 318AE(2).

coal mining project, for chapter 4, part 3, division 5, see section 136P(1).

coal or oil shale mining lease means a coal mining lease or oil shale mining lease.

coal or oil shale mining tenement see section 318AG.

coal seam gas see section 318AC(1).

Collingwood Park State guarantee or ***guarantee***, for chapter 12, part 2, see section 334R.

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commencement day, for chapter 12, part 4, see section 334ZB.

Common Provisions Act means the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Commonwealth Native Title Act means the *Native Title Act 1993* (Cwlth).

company means the following entities within the meaning of the Corporations Act—

(a) a company;

(b) a registered foreign company.

compliance direction see section 335A(2).

condition includes term.

conduct and compensation agreement see the Common Provisions Act, section 83(1).

conference election notice see the Common Provisions Act, section 83A(2).

confidential information, for chapter 11, part 4, see section 334A.

coordination arrangement see section 318AJ.

credit provider see the National Credit Code.

CSG assessment criteria see section 318AP(1)(c).

CSG statement see section 318AP(1)(a).

dealing, in relation to a mining tenement, means a dealing with a resource authority, under the Common Provisions Act, that is a mining tenement.

default assessment, for chapter 11, part 3, see section 331A(2).

designated CSG product means coal seam gas mined from pre-drainage, ventilation or from drainage of a goaf.

development see the Planning Act, schedule 2.

development plan, for a coal mining lease or an oil shale mining lease, see section 318AH.

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district prospecting permit see section 14.

educational institution means a school, college or registered higher education provider.

EIS means an environmental impact statement.

eligible claimant see the Common Provisions Act, section 81(1).

eligible person means—

(a) other than for chapter 5, part 2 and chapter 6, part 2—

(i) an adult; or

(ii) a company; or

(iii) a local government that acquires a mining claim or mining lease under the *Local Government Act 2009* for overdue rates and charges; or

(iv) an educational institution the Minister treats as an eligible person under section 7; and

(b) for chapter 5, part 2 and chapter 6, part 2—a person who is a party to an Aurukun agreement with the State.

enter land includes remain on the land.

environment has the meaning given by the Environmental Protection Act.

environmental authority means an environmental authority under the Environmental Protection Act.

Environmental Protection Act means the *Environmental Protection Act 1994*.

EPA administering authority, for a mining tenement or an application, means the administering authority under the Environmental Protection Act for an environmental authority for mining activities or an application for an environmental authority for mining activities relating to the mining tenement or the application.

EP tender means a tender for an exploration permit in response to a call for EP (coal) tenders or a call for EP (non-coal) tenders.

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expiry day, for a mining tenement, means the day the tenement expires under its terms.

exploration permit means an exploration permit under chapter 4.

exploration tenement means any exploration permit or mineral development licence.

explore means take action to determine the existence, quality and quantity of minerals on, in or under land or in the waters or sea above land by—

(a) prospecting;

(b) using instruments, equipment and techniques appropriate to determine the existence of any mineral;

(c) extracting and removing from land for sampling and testing an amount of material, mineral or other substance in each case reasonably necessary to determine its mineral bearing capacity or its properties as an indication of mineralisation;

(d) doing anything else prescribed under a regulation.

fee includes tax.

file, a document, has the meaning affected by section 386O.

final rehabilitation site, for chapter 13, part 4, see section 344.

final report—

(a) for an exploration permit—see section 178C(a); or

(b) for a mineral development licence—see section 231AC(a).

financial resources, for a provision about an application for an exploration permit, mineral development licence or mining lease, includes the financial resources necessary to comply with the following for the area to which the application relates—

(a) any relevant provisions of the Commonwealth Native Title Act;

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(b) any registered indigenous land use agreement under that Act.

forward, a document, has the meaning affected by section 386O.

fossicking area has the meaning given by the *Fossicking Act 1994*.

garnishee, for chapter 11, part 3, division 6, see section 333L(1)(b).

garnishee amount, for chapter 11, part 3, division 6, see section 333L(3).

garnishee notice, for chapter 11, part 3, division 6, see section 333L(3).

Geothermal Act see section 3B.

geothermal coordination arrangement see the Geothermal Act, section 138(4).

geothermal lease see the Geothermal Act, section 19(1)(b).

geothermal permit see the Geothermal Act, section 19(1)(a).

geothermal tenure see the Geothermal Act, section 19(2).

GHG means greenhouse gas.

GHG authority see the GHG storage Act, section 18(3).

GHG coordination arrangement see the GHG storage Act, section 186(3).

GHG lease see the GHG storage Act, section 18(1)(b).

GHG permit see the GHG storage Act, section 18(1)(a).

GHG storage Act see section 3B.

GHG tenure see the GHG storage Act, section 18(2).

give, a document to the Minister or chief executive, other than under a royalty provision, has the meaning affected by section 386O.

hand mining means mining using hand-operated tools, including, for example, picks, shovels, hammers, gads, sieves and windlasses, but does not include mining using explosives.

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hearing includes a presentation of an interim nature, including, for example, a directions hearing.

Heritage Act means the *Queensland Heritage Act 1992*.

holder—

(a) for a prospecting permit, exploration permit, mining claim, mineral development licence or mining lease, means the person in whose name the permit, claim, licence or lease is recorded, and, for chapter 2, part 1, includes a person mentioned in section 13, definition *holder*; or

(b) of an environmental authority, for chapter 13, part 4, see section 344.

holder submissions see section 318ELAT(1).

improvement restoration, for a mining tenement, see section 6C.

incidental coal seam gas see section 318AC(2).

indicative approval see section 318AAR(1).

information-giver, for chapter 8, part 10, see section 318EJ(1).

information statement, for chapter 9, see section 318ELAQ(1)(a).

initial development plan requirements see section 318DS.

land includes—

(a) land within the beds and banks of all streams, watercourses and inundated land; and

(b) land beneath the internal waters of Queensland; and

(c) the sea bed and subsoil to which this Act applies; and

(d) waters in, upon and above land; and

(e) subterranean land;

but, except in sections 8, 9 and 11, does not include a protected area.

land access code see the Common Provisions Act, section 36.

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last objection day for—

(a) an application for a mining claim—see section 64(3)(d); or

(b) an application for a mining lease—see section 252(3)(e).

later development plan requirements see section 318EB(2)(b).

legacy borehole means a bore or well that the holder of the relevant exploration permit, mineral development licence or mining lease reasonably believes—

(a) was drilled for the purpose (the ***original purpose***) of—

(i) exploration or production of mineral or petroleum resources; or

(ii) informing the exploration or production of mineral or petroleum resources; and

(b) is no longer in use for the original or another purpose.

liable person, for chapter 11, part 3, division 6, see section 333L(1)(a).

lodge, a document, has the meaning affected by section 386O.

make a submission has the meaning affected by section 386O.

mandatory provision, of the land access code or the small scale mining code, means a provision of the code with which the code requires compliance.

mine see section 6A.

mineral—

(a) generally, see section 6; and

(b) for section 121 or 122, see section 121(4); and

(c) for section 312 or 313, see section 312(4).

mineral development licence, means—

(a) for chapter 5, part 2—a mineral development licence under chapter 5, part 2; and

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(b) other than for chapter 5, part 2—a mineral development licence under chapter 5, part 1 or 2.

mineral (f), see section 6(2)(f) and (3)(c).

mineral (f) development licence means a mineral development licence for mineral (f), whether or not the licence is also for other minerals.

mining claim means a mining claim under chapter 3.

mining claim notice, for an application for the grant of a mining claim, means the mining claim notice for the application given under section 64.

mining interest means—

(a) a mining tenement; or

(b) a tenure held from the State under another Act about mining under which tenure the holder is authorised to carry out mining or a related mineral or energy resources activity.

mining lease means—

(a) for chapter 6, part 2—a mining lease under chapter 6, part 2; or

(b) other than for chapter 6, part 2—a mining lease under chapter 6, part 1 or 2.

mining lease holder for chapter 8, part 8, divisions 1 and 2, see section 318CL.

mining lease notice, for an application for the grant of a mining lease, means—

(a) the mining lease notice for the application given under section 252; or

(b) if the mining lease notice has been reissued under section 253—the reissued notice.

mining tenement means a prospecting permit, mining claim, exploration permit, mineral development licence, mining lease or water monitoring authority.

mining tenement interest means—

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(a) a mining tenement; or

(b) a right existing under, or in relation to, a mining tenement.

ML 70434 entity, for chapter 12, part 4B, see section 334ZJH.

ML 70460 entity, for chapter 12, part 4B, see section 334ZJH.

moratorium period, for chapter 12, part 1, see section 334E(1).

mortgage includes a charge on any mining claim, mineral development licence or mining lease for securing money or money's worth.

National Credit Code means the *National Credit Code* in Schedule 1 of the *National Consumer Credit Protection Act 2009* (Cwlth).

natural underground reservoir means a part of a geological formation or structure (including a coal seam) in which coal seam gas or petroleum has accumulated.

notice of intention to resume, for the proposed taking of land under a resumption law, means—

(a) if the land is taken under the process stated in the ALA (whether the land is taken under the ALA or another resumption law)—the notice of intention to resume under the ALA; or

(b) otherwise—the notice, however named, required to be given under the resumption law to notify persons of the proposed taking.

occupied land means land (other than land occupied under a permit under the *Land Act 1994*) of which there is an owner, and includes a reserve.

occupier, of a place, means a person—

(a) who, under an Act or a lease registered under the *Land Title Act 1994*, has a right to occupy the place, other than under a mining interest, petroleum tenure, licence under the Petroleum and Gas (Production and Safety) Act, GHG authority or geothermal tenure; or

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(b) to whom an owner of the place or another occupier under paragraph (a) has given the right to occupy the place.

officer, of a company, has the same meaning as officer of a corporation under the Corporations Act.

oil shale see section 318AD.

oil shale activity see section 334I(1).

oil shale exploration tenement see section 318AF(1).

oil shale mining lease see section 318AF(2).

oil shale mining tenement see section 334F.

original assessment, for chapter 11, part 3, see section 331.

other mining legislation means the following—

(a) Common Provisions Act;

(b) *Coal Mining Safety and Health Act 1999*;

(c) *Explosives Act 1999*;

(d) *Fossicking Act 1994*;

(e) *Mining and Quarrying Safety and Health Act 1999*;

(f) *Petroleum Act 1923*;

(g) *Petroleum and Gas (Production and Safety) Act 2004*.

overlapping authority application period, for chapter 9, see section 318ELAZ(2).

overlapping authority (geothermal or GHG) see section 318ELAN.

overlapping authority priority see section 318ELAT(3)(b)(i).

overlapping lease, for chapter 9, see section 318ELAZ(2).

overlapping permit, for chapter 9, see section 318ELAU(1)(a).

overlapping tenure, for chapter 9, part 2, see section 318ELAP(c).

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owner, of a water monitoring bore, means the person who, under section 334ZZJ, owns the works constructed in connection with the bore.

owner, of land, means—

(a) for a reserve (other than land that is a reserve merely because it is in the wet tropics area and land that is rail corridor land)—

(i) if the reserve is a road—the entity having control of the road; or

(ii) if the reserve is a resources reserve under the *Nature Conservation Act 1992* for which there are trustees—the trustees for the reserve; or

(iii) if the reserve is DOGIT land under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*—the trustees for the land; or

(v) if Aboriginal land under the *Aboriginal Land Act 1991* is taken to be a reserve because of section 202(2) or (4)(b) of that Act—the trustee of the land; or

(vi) if Torres Strait Islander land under the *Torres Strait Islander Land Act 1991* is taken to be a reserve because of section 151(2) of that Act—the trustee of the land; or

(vii) if subparagraphs (i) to (vi) do not apply—the Minister responsible for administering the Act under which it is a reserve; or

(b) for freehold land—the registered owner of the land; or

(c) if a person is, or will on performing conditions, be entitled to a deed of grant in fee simple for the land—the person; or

(d) if an estate in fee simple of the land is being purchased from the State—the purchaser; or

(e) for a State forest or timber reserve under the *Forestry Act 1959*—the chief executive of the department

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responsible for the administration of the *Forestry Act 1959*; or

(f) for land that, under the *Aboriginal and Torres Strait Islander Land Holding Act 2013*, is lease land for a 1985 Act granted lease or a new Act granted lease—the lessee; or

(g) for a person who holds land from the State under an Act (other than an Act about mining or petroleum) under another kind of lease or occupancy (other than occupation rights under a permit under the *Land Act 1994*) of the land—the person;

and includes, in addition to an owner mentioned in paragraphs (a) to (g)—

(h) for a forest entitlement area under the *Forestry Act 1959*—the chief executive of the department responsible for the administration of the *Forestry Act 1959*; and

(ha) for a licence area under the *Forestry Act 1959*—the plantation licensee for the licence area under that Act; and

(i) for land in the wet tropics area—the Wet Tropics Management Authority; and

(j) for rail corridor land—

(i) if the rail corridor land is existing rail corridor land or new rail corridor land under the *Transport Infrastructure Act 1994*—the Minister administering chapter 7 of that Act; or

(ii) if the rail corridor land is land taken or acquired under the *State Development and Public Works Organisation Act 1971* for the purpose of a railway—the Coordinator-General under that Act.

parcel prospecting permit see section 14.

partial relinquishment report, for an exploration permit, see section 178B(a).

partial surrender report, for a mineral development licence, see section 231AB(a).

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parties, for chapter 13, part 2, see section 335G.

permanent building means a building other than a building of a temporary nature.

Petroleum and Gas (Production and Safety) Act means the *Petroleum and Gas (Production and Safety) Act 2004*.

petroleum authority see the *Petroleum and Gas (Production and Safety) Act 2004*, section 18(2).

petroleum development preference see section 318AX(3)(b).

petroleum lease see section 318AI(1).

petroleum lease application period see section 318BG(2).

petroleum tenure see section 318AI(3).

physical monument means a thing placed in or on land for the purpose of locating the boundary of an area of land, including, for example—

(a) a peg or post inserted in the ground; or

(b) a cairn.

Planning Act means the *Planning Act 2016*.

planning scheme means a planning scheme under the Planning Act.

plan period, for a development plan, see section 318AH(3).

PRCP schedule, for chapter 13, part 4, see section 344.

pre-existing improvements, for a mining tenement, means all improvements on, or attached to, the land the subject of the tenement immediately before the application for the tenement was lodged.

Examples of an improvement—

1 a bridge, building, fence, stock yard or other structure

2 equipment, machinery or plant

preference decision see section 318BB(2).

prescribed criteria, for the grant of an exploration permit, see section 137.

prescribed persons, for chapter 12, part 4, see section 334ZB.

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project land, for a coal mining project, for chapter 4, part 3, division 5, see section 136P(2).

property—

(a) for section 121, 122 or 123, see section 121(4); and

(b) for section 312, 313 or 314, see section 312(4).

proposed lease area see section 232.

prospect see section 6B.

prospecting permit means a prospecting permit granted under chapter 2.

protected area means any of the following under the *Nature Conservation Act 1992*—

(a) a national park (scientific);

(b) a national park;

(c) a national park (Aboriginal land);

(d) a national park (Torres Strait Islander land);

(e) a conservation park;

(f) a special wildlife reserve.

public official, for chapter 11, part 4, see section 334A.

rail corridor land means—

(a) existing rail corridor land or new rail corridor land under the *Transport Infrastructure Act 1994*; or

(b) land taken or acquired under the *State Development and Public Works Organisation Act 1971* for the purpose of a railway.

rail government entity see the *Transport Infrastructure Act 1994*, schedule 6.

reassessment, for chapter 11, part 3, see section 331.

recipient, for chapter 8, part 10, see section 318EJ(1).

refuse includes reject.

register means the register kept by the chief executive under the Common Provisions Act, section 197.

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registered higher education provider see the *Tertiary Education Quality and Standards Agency Act 2011* (Cwlth), section 5.

registered indigenous land use agreement under the Commonwealth Native Title Act means an indigenous land use agreement registered on the Register of Indigenous Land Use Agreements under the Commonwealth Native Title Act.

registrar, for chapter 12, part 2, see section 334Q.

registration, for a dealing or an application transfer, means recorded in the register.

rehabilitation activities—

(a) for chapter 12, part 4A—see section 334ZJE(2); or

(b) for chapter 13, part 4—see section 344.

relevant Aurukun agreement means—

(a) for a mineral development licence—the Aurukun agreement for the Aurukun project for which the licence was granted; or

(b) for a mining lease—the Aurukun agreement for the Aurukun project for which the lease was granted.

relevant environmental condition, for a mining tenement, means a condition of an environmental authority for mining activities under the Environmental Protection Act relating to the tenement.

relevant land, for a mining lease application, means the land applied for in the application.

relevant local government, for land, means the local government for the local government area in which the land is situated.

relevant mining district, for land, means the mining district in which the land is situated.

relevant owner or occupier, for restricted land, see the Common Provisions Act, section 69.

relinquishment condition, for a coal mining lease or an oil shale mining lease, see section 318BM(2).

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relinquishment report, for a mining lease, see section 315A(2)(a).

remediation activities, for chapter 13, part 4, see section 344A(1).

rental year means each 12-month period that starts on 1 September and ends on 31 August.

repealed Acts means the Acts repealed by this Act.

required information, for a mining tenement, means information about authorised activities carried out under the mining tenement that its holder has lodged under this Act.

reserve means—

(a) land that is—

(i) a road; or

(ii) a State forest or timber reserve under the *Forestry Act 1959*; or

(iii) a resources reserve under the *Nature Conservation Act 1992*; or

(iv) Aboriginal land under the *Aboriginal Land Act 1991* taken to be a reserve because of section 202(2) or (4)(b) of that Act; or

(v) Torres Strait Islander land under the *Torres Strait Islander Land Act 1991* taken to be a reserve because of section 151(2) of that Act; or

(vi) rail corridor land; or

(vii) vested in—

(A) the Minister administering the *Education (General Provisions) Act 2006*; or

(B) QR Limited ACN 124 649 967; or

(BA) a rail government entity; or

(C) the Queensland Housing Commission; or

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(D) the Minister responsible for the construction of public buildings or the chief executive of that Minister's department; or

(viii) held under the *Transport Planning and Coordination Act 1994*; or

(ix) granted in trust or reserved for a community purpose under the *Land Act 1994* or another Act; or

(b) land within the wet tropics area;

but does not include land (other than a road) reserved as a town or suburb under the *Land Act 1994*.

resource management decision, for chapter 9, part 2, see section 318ELAV.

restricted land see the Common Provisions Act, section 68.

resumption law—

(a) means a law that provides for the compulsory acquisition of land, including, for example, the following—

(i) the ALA, including as applied by another law providing for an entity to take land under the ALA as if the entity were a constructing authority under the ALA;

Examples of other laws for subparagraph (i)—

- *Electricity Act 1994*, section 116
- *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, section 53AY

(ii) the *Land Act 1994*, chapter 5, part 3, division 3;

(iii) the *Petroleum and Gas (Production and Safety) Act 2004*, sections 456 to 458;

(iv) the *Queensland Reconstruction Authority Act 2011*, section 99;

(v) the *State Development and Public Works Organisation Act 1971*, section 82 or 125;

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(vi) the *Transport Planning and Coordination Act 1994*, section 25 or 26; but

(b) does not include the *Land Act 1994*, chapter 5, part 3, divisions 1 and 2.

resumption notice, for the taking of land under a resumption law, means—

(a) if the land is taken under the process stated in the ALA (whether the land is taken under the ALA or another resumption law)—the gazette resumption notice under the ALA for the taking; or

(b) otherwise—the instrument giving effect to the taking.

road has the meaning given by the *Land Act 1994*.

road transport infrastructure means transport infrastructure relating to roads.

road use direction see the Common Provisions Act, section 64.

royalty investigator means a person appointed as a royalty investigator under section 333S.

royalty penalty amount see section 331E(1).

royalty provision see section 333R.

royalty-related amount see section 331.

section 65 conference see section 66.

small scale mining activity see the Environmental Protection Act, schedule 4.

small scale mining code see section 391C(1).

special agreement Act means any of the following Acts and any agreement or lease under or mentioned in the Acts—

(a) *Alcan Queensland Pty. Limited Agreement Act 1965*;

(b) *Central Queensland Coal Associates Agreement Act 1968*;

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(c) *Central Queensland Coal Associates Agreement and Queensland Coal Trust Act 1984*;

(d) *Central Queensland Coal Associates Agreement (Amendment) Act 1986*;

(e) *Central Queensland Coal Associates Agreement Amendment Act 1989*;

(f) *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*;

(g) *Mount Isa Mines Limited Agreement Act 1985*;

(h) *Queensland Nickel Agreement Act 1970*;

(i) *Queensland Nickel Agreement Act 1988*;

(j) *Thiess Peabody Coal Pty. Ltd. Agreement Act 1962*;

(k) *Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act 1965*.

special criteria, for a call for EP (coal) tenders or EP (non-coal) tenders, see section 136C(2)(d)(iii).

specific purpose mining lease means a mining lease that, under section 234(1)(b), is granted for a purpose other than mining.

specified works, for part 10A, see section 382.

State-controlled road see the *Transport Infrastructure Act 1994*, schedule 6.

sub-block means a sub-block as described in section 126.

submission period, for chapter 8, part 2, see section 318AX(2).

submissions means written submissions.

surrender report, for a mining lease, see section 315B(2)(a).

survey mark see the *Survey and Mapping Infrastructure Act 2003*, schedule.

take, in relation to land, includes acquire.

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tender security, for an EP tender, means an amount given by the relevant tenderer as security for the tender.

termination includes expiry.

the public interest, for chapter 8, see section 318AK.

transfer, of a water monitoring bore, see section 334ZZL(2).

tribunal means the Land and Resources Tribunal.

underground water see the Water Act, schedule 4.

underground water obligations, of a holder of a mineral development licence or mining lease, means—

(a) the holder's underground water obligations under the Water Act, chapter 3; and

(b) any other obligation under the Water Act, chapter 3 with which the holder is required to comply, if failure to comply with the obligation is an offence against that Act.

Examples of another obligation under the Water Act, chapter 3 with which the holder may be required to comply—

- giving an underground water impact report under section 370 of that Act
- preparing and complying with a baseline assessment plan under sections 397 and 400 of that Act

underground water rights, for a mineral development licence or mining lease, see section 334ZP.

unpaid royalty interest see section 332(1).

Water Act means the *Water Act 2000*.

water bore see the Water Act, schedule 4.

water monitoring activity see section 334ZQ(4).

water monitoring authority means a water monitoring authority granted under section 334ZV.

water monitoring bore see the Water Act, section 362.

wet tropics area means the wet tropics area within the meaning of the *Wet Tropics World Heritage Protection and Management Act 1993*.

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work program, for activities to be carried out under a mining claim, means a document containing the following information about the activities—

(a) the mining method to be used;

(b) details of water storage facilities for the area of the mining claim;

(c) information about mine workings on or to be located on the area of the claim or land adjoining the claim;

(d) the quantity of minerals to be mined;

(e) the treatment methods to be used on the mined minerals;

(f) details of electrical equipment and explosives to be used for the activities;

(g) information about the proposed hours of operation and the number of employees for the activities;

(h) details of any buildings or other structures, including, for example, sheds and temporary accommodation buildings, located or to be located in the area;

(i) other information about the activities prescribed under a regulation.

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